

CASE NO. 22-1750

**IN THE
United States Court of Appeals
FOR THE FOURTH CIRCUIT**

GARY NESTLER, on behalf of themselves and all others similarly situated; VIEWED STUDENT FEMALE 200, on behalf of themselves and all others similarly situated; VIEWED STUDENT MALE 300, on behalf of themselves and all others similarly situated,
Plaintiffs-Appellants,

v.

THE BISHOP OF CHARLESTON, a Corporation Sole;
BISHOP ENGLAND HIGH SCHOOL; TORTFEASORS, 1 - 10;
THE BISHOP OF THE DIOCESE OF CHARLESTON, in his official capacity; ROBERT GUGLIELMONE, individually,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA AT ABINGDON

**JOINT APPENDIX - VOLUME I OF III
(Pages 1 - 572)**

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APPEAL,CLOSED,JURY

**U.S. District Court
District of South Carolina (Charleston)
CIVIL DOCKET FOR CASE #: 2:21-cv-00613-RMG**

Nestler et al v. Bishop of Charleston, The et al
Assigned to: Honorable Richard M Gergel
Case in other court: Berkeley County Court of Common Pleas,
2021-CP-08-00256
4CCA, 22-01750
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 03/03/2021
Date Terminated: 06/17/2022
Jury Demand: Plaintiff
Nature of Suit: 360 P.I.: Other
Jurisdiction: Diversity

Plaintiff

Gary Nestler
*on behalf of themselves and all others
similarly situated*

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Date Filed	#	Docket Text
03/03/2021	1	NOTICE OF REMOVAL from Berkeley County Court of Common Pleas, case number 2021-CP-08-00256. (Filing fee \$ 402 receipt number 0420-9684459), filed by Robert Guglielmone, Bishop of Charleston, The, Bishop England High School, Bishop of the Diocese of Charleston, The. (Attachments: # 1 State Court Documents, # 2 Exhibit B Decl. of Patrick Finneran)(sshe,) (Entered: 03/03/2021)
03/03/2021	2	Local Rule 26.01 Answers to Interrogatories by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone. (sshe,) (Entered: 03/03/2021)
03/04/2021	4	ANSWER to Complaint by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone.(Dukes, Richard) (Entered: 03/04/2021)
03/17/2021	5	Local Rule 26.01 Answers to Interrogatories by Tuition Payer 100, Viewed Student Female 200, Viewed Student Male 300.(Richter, Lawrence) (Entered: 03/17/2021)
03/30/2021	6	DELETION OF DOCKET ENTRY NUMBER 6 (original) Reason: Motion from 2:21-cv-20-RMG spread incorrectly inadvertently per filing user Filing date of original filing: 3/30/2021 (sshe,) (Entered: 03/30/2021)
05/10/2021	7	NOTICE of Request for Protection from Court Appearance by Richard S Dukes, Jr for Aug 1 - Aug 8, 2021; and Dec 21, 2021 - Jan 2, 2022 (Attachments: # 1 Proposed Order Protection from Court Appearance - Richard S. Dukes, Jr.)(Dukes, Richard) (Entered: 05/10/2021)

05/12/2021	<u>8</u>	SCHEDULING ORDER Rule 26(f) Conference Deadline 5/30/2021, 26(a) Initial Disclosures due by 6/5/2021, Rule 26 Report due by 6/5/2021, Motions to Amend Pleadings due by 6/21/2021, Plaintiffs ID of Expert Witness due by 7/21/2021, Defendants ID of Expert Witnesses Due by 8/20/2021, Records Custodian Affidavit due by 8/27/2021, Discovery due by 9/20/2021, Motion in Limine due by 15 business days prior to jury selection, Motions due by 10/4/2021, Rule 26(a)(3) Disclosures due by 21 business days prior to jury selection, Pretrial Briefs due by 5 business days prior to jury selection, Case ready for jury selection and/or trial on or after 1/1/2022 Signed by Honorable Richard M Gergel on 5/12/2021. (sshe,) (Entered: 05/12/2021)
05/12/2021	<u>9</u>	ORDER TO CONDUCT MEDIATION Mediation Due by 10/20/2021 Signed by Honorable Richard M Gergel on 5/12/2021. (sshe,) (Entered: 05/12/2021)
06/04/2021	<u>10</u>	Rule 26 Outline of Discovery Plan by Tuition Payer 100, Viewed Student Female 200, Viewed Student Male 300.(Richter, Lawrence) (Entered: 06/04/2021)
06/04/2021	<u>11</u>	Rule 26(f) Report by Tuition Payer 100, Viewed Student Female 200, Viewed Student Male 300. (Attachments: # <u>1</u> Exhibit Meditation Form)(Richter, Lawrence) (Entered: 06/04/2021)
06/04/2021	<u>12</u>	Rule 26 Outline of Discovery Plan <i>Local Rule 26.03 Answers to Interrogatories</i> by Tuition Payer 100, Viewed Student Female 200, Viewed Student Male 300.(Richter, Lawrence) Modified on 6/7/2021 to edit docket text(sshe,). (Entered: 06/04/2021)
06/07/2021	<u>13</u>	<i>Defendants'</i> Rule 26 Outline of Discovery Plan by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone, Tortfeasors 1-10.(Dukes, Richard) (Entered: 06/07/2021)
06/07/2021	<u>14</u>	Rule 26(f) Report by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone, Tortfeasors 1-10. (Attachments: # <u>1</u> Exhibit Meditation Form)(Dukes, Richard) (Entered: 06/07/2021)
06/07/2021	<u>15</u>	<i>Defendants'</i> Local Rule 26.03 Answers to Interrogatories by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone, Tortfeasors 1-10.(Dukes, Richard) (Entered: 06/07/2021)
06/09/2021	16	NOTICE of Hearing: Telephone Status Conference set for 6/18/2021 at 9:30 AM before Honorable Richard M Gergel. Court staff needed. The Court will provide call-in instructions.(ltap,) (Entered: 06/09/2021)
06/16/2021	<u>17</u>	<i>Second Amended</i> Rule 26 Outline of Discovery Plan by Tuition Payer 100, Viewed Student Female 200, Viewed Student Male 300.(Richter, Lawrence) (Entered: 06/16/2021)
06/17/2021	18	NOTICE OF RESCHEDULED HEARING Telephone Status Conference set for 6/18/2021 at 9:30 AM cancelled and rescheduled to: Telephone Conference set for 6/22/2021 10:00 AM before Honorable Richard M Gergel. (Dial in instructions remain the same)(cper,) (Entered: 06/17/2021)
06/21/2021	<u>19</u>	MOTION for Extension of Time by Tuition Payer 100, Viewed Student Female 200, Viewed Student Male 300. Response to Motion due by 7/6/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Proposed Order Proposed Consent Order)Proposed order is being emailed to chambers with copy to opposing counsel.(Richter, Lawrence)

		(Entered: 06/21/2021)
06/22/2021	20	Minute Entry. Proceedings held before Honorable Richard M Gergel: Telephone Conference held on 6/22/2021. All parties are represented on the call. Court to issue order re: core class discovery issues. Court Reporter Karen Martin. (cper,) (Entered: 06/22/2021)
06/22/2021	21	AMENDED DISCOVERY AND SCHEDULING ORDER See Order for details re: Class Discovery, Numbers of Depositions and Interrogatories allowed, Counsel to meet and confer as to proposed Confidentiality Order, Defendants directed to file a motion on the matter of Anonymity of Named Parties within 15 days of this order, Motions to Amend Pleadings due by 7/6/2021,, Plaintiffs ID of Expert Witness due by 8/15/2021,, Defendants ID of Expert Witnesses Due by 9/14/2021,, Records Custodian Affidavit due by 9/22/2021,, Class Certification Discovery due by 10/15/2021,, Class Certification Motion due by 10/29/2021, Counsel to meet and confer within 10 days after the Court rules on the motion for class certification as to proposed revised scheduling order to address other issues and deadlines of Dkt. No. 8 (Motion granted: 19 MOTION for Extension of Time for Amendment of Pleadings filed by Tuition Payer 100, Viewed Student Male 300, Viewed Student Female 200). AND IT IS SO ORDERED. Signed by Honorable Richard M Gergel on 6/22/2021. (sshe,) (Entered: 06/22/2021)
07/02/2021	22	MOTION for Confidentiality Order by Tuition Payer 100, Viewed Student Female 200, Viewed Student Male 300. Response to Motion due by 7/16/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Proposed Order Redlined version, # 2 Proposed Order Clean version, # 3 Exhibit Form Attachments to Order) Proposed order is being emailed to chambers with copy to opposing counsel.(Richter, Lawrence) (Entered: 07/02/2021)
07/06/2021	23	CONFIDENTIALITY ORDER granting 22 Motion for Confidentiality Order Signed by Honorable Richard M Gergel on 7/6/2021.(sshe,) (Entered: 07/06/2021)
07/07/2021	24	First MOTION to Compel <i>Plaintiffs to Comply with Fed. R. Civ. P. 17</i> by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmon. Response to Motion due by 7/21/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.(Dukes, Richard) (Entered: 07/07/2021)
07/15/2021	25	MOTION for Protective Order by LS3P Associates LTD. Response to Motion due by 7/29/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Exhibit Notice of Deposition of 30(B)(6) Witness for LS3P, # 2 Exhibit Subpoena to Testify at a Deposition to LS3P, # 3 Exhibit June 18, 2021 email to Plaintiffs counsel, # 4 Exhibit July 2, 2021 letter to Plaintiffs counsel, # 5 Exhibit July 6, 2021 email to Plaintiffs Counsel, # 6 Exhibit July 7, 2021 email to Plaintiffs counsel, # 7 Exhibit July 7, 2021 email to LS3Ps counsel from Plaintiffs counsel, # 8 Exhibit July 7, 2021 email to Plaintiffs counsel, # 9 Exhibit Deposition Transcript, # 10 Exhibit Letter to LS3P's counsel) No proposed order.(Stair, Kent) (Entered: 07/15/2021)
07/21/2021	26	RESPONSE in Opposition re 24 First MOTION to Compel <i>Plaintiffs to Comply with Fed. R. Civ. P. 17</i> Response filed by Tuition Payer 100, Viewed Student Female 200, Viewed Student Male 300.Reply to Response to Motion due by 7/28/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6.

		(Richter, Lawrence) (Entered: 07/21/2021)
07/28/2021	27	RESPONSE in Opposition re 25 MOTION for Protective Order Response filed by Tuition Payer 100, Viewed Student Female 200, Viewed Student Male 300. Reply to Response to Motion due by 8/4/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Richter, Lawrence) (Entered: 07/28/2021)
07/28/2021	28	REPLY to Response to Motion re 24 First MOTION to Compel <i>Plaintiffs to Comply with Fed. R. Civ. P. 17</i> Response filed by Bishop of the Diocese of Charleston, The, Bishop England High School, Bishop of Charleston, The, Robert Guglielmon. (Rushton, Megan) Modified on 7/29/2021 to add filers as listed on document(sshe,). (Entered: 07/28/2021)
08/04/2021	29	ORDER AND OPINION: Defendants motion to compel Plaintiffs to comply with Fed.R. Civ. P. 10 and 17 (Dkt. No. 24) is GRANTED IN PART AND DENIED IN PART. Defendants motion is GRANTED to the extent that Plaintiffs are directed to file an amended complaint which identifies the named plaintiffs representing the Tuition Class on or before August 13, 2021. Defendants motion is otherwise DENIED. AND IT SO ORDERED. Signed by Honorable Richard M Gergel on 8/4/21.(ltap,) Modified document type (Opinion) on 8/5/2021 (sshe,). (Entered: 08/04/2021)
08/04/2021	30	REPLY to Response to Motion re 25 MOTION for Protective Order Response filed by LS3P Associates LTD. (Attachments: # 1 Exhibit A July 7 email to LS3Ps counsel, # 2 Exhibit B Deposition Q&A Chart)(Stair, Kent) Modified on 8/5/2021 to add descriptions to exhibits(sshe,). (Entered: 08/04/2021)
08/10/2021	31	ORDER AND OPINION: The Court DENIES Defendants motion for a protective order to terminate or limit the deposition of LS3P (Dkt. No. 25). The Court further ORDERS Plaintiffs and LS3P to, by August 30, 2021, meet and confer, schedule, reconvene and complete the Rule 30(b)(6) deposition of LS3P in accordance with this Order. AND IT SO ORDERED. Signed by Honorable Richard M Gergel on 8/9/21.(ltap,) Modified document type (Opinion) on 8/11/2021 (sshe,). (Entered: 08/10/2021)
08/11/2021	32	AMENDED ORDER AND OPINION: The Court DENIES LS3Ps motion for a protective order to terminate or limit the deposition of LS3P (Dkt. No. 25). The Court further ORDERS Plaintiffs and LS3P to, by August 30, 2021, meet and confer, schedule, reconvene and complete the Rule 30(b)(6) deposition of LS3P in accordance with this Order. AND IT SO ORDERED. Signed by Honorable Richard M Gergel on 8/11/21. (ltap,) Modified document type (Opinion) on 8/11/2021 (sshe,). (Entered: 08/11/2021)
08/12/2021	33	Joint MOTION for Extension of Time by Tuition Payer 100, Viewed Student Female 200, Viewed Student Male 300. Response to Motion due by 8/26/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Proposed Order Proposed Consent Order) Proposed order is being emailed to chambers with copy to opposing counsel. (Richter, Lawrence) (Entered: 08/12/2021)
08/12/2021	34	TEXT ORDER For good cause shown and with the consent of all parties, the joint motion to extend the time for Plaintiffs to identify their experts and provide written reports until 9/14/21 and for Defendants to identify their experts and

		provide written reports until 10/14/21 (Dkt. No. 33) is granted. AND IT IS SO ORDERED. Entered at the Direction of Honorable Richard M Gergel on 8/12/2021.(sshe,) (Entered: 08/12/2021)
08/13/2021	35	AMENDED COMPLAINT against All Defendants, filed by Viewed Student Female 200, Gary Nestler, Viewed Student Male 300. Service due by 11/12/2021 (Attachments: # 1 Exhibit Locker Room Photo, # 2 Exhibit Indictments and sentencing sheet, # 3 Exhibit Finneran letter 5.7.19, # 4 Exhibit Finneran letter July 2019, # 5 Exhibit BEHS v. Hudson, # 6 Exhibit Affidavit of John Barker, # 7 Exhibit Excerpts from 7.17.19 Transcript of Record and pleading excerpts) (Richter, Lawrence) Modified docket text re party name on 8/16/2021 (sshe,). (Entered: 08/13/2021)
08/26/2021	36	ANSWER to 35 Amended Complaint,, by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone. (Dukes, Richard) (Entered: 08/26/2021)
08/30/2021	37	NOTICE of Request for Protection from Court Appearance by Richard S Dukes, Jr for 09/13/2021 - 09/21/2021 (Dukes, Richard) (Entered: 08/30/2021)
08/31/2021	38	TEXT ORDER re 37 Notice of Request for Protection from Court Appearance filed by Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone, Bishop England High School. Counsel should please know the protection request is duly noted and take under advisement. Entered at the Direction of Honorable Richard M Gergel on 8/31/2021. (sshe,) (Entered: 08/31/2021)
09/08/2021	39	Joint MOTION for Extension of Time <i>for Parties to Identify Their Respective Experts and Other Deadlines</i> by Gary Nestler, Viewed Student Female 200, Viewed Student Male 300. Response to Motion due by 9/22/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Proposed Order Proposed Consent Order)Proposed order is being emailed to chambers with copy to opposing counsel.(Richter, Lawrence) (Entered: 09/08/2021)
09/08/2021	40	THIRD AMENDED SCHEDULING ORDER Plaintiffs ID of Expert Witness due by 9/28/2021,, Defendants ID of Expert Witnesses Due by 10/28/2021,, Records Custodian Affidavit due by 10/6/2021,, Class Certification Discovery due by 10/29/2021,, Class Certification Motions due by 11/12/2021 (Motion re: 39 Joint MOTION for Extension of Time <i>for Parties to Identify Their Respective Experts and Other Deadlines</i> filed by Gary Nestler, Viewed Student Male 300, Viewed Student Female 200). Signed by Honorable Richard M Gergel on 9/8/2021. (sshe,) (Entered: 09/08/2021)
09/28/2021	41	PLAINTIFF'S ID OF EXPERT WITNESSES by Gary Nestler, Viewed Student Female 200, Viewed Student Male 300. (Attachments: # 1 Exhibit Expert Report of Dr. Amanda Salas, # 2 Exhibit Expert Report of Ken Richardson)(Richter, Lawrence) (Entered: 09/28/2021)
10/13/2021	42	First MOTION for Protective Order <i>Regarding Testimony of Maria Aselage</i> by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone. Response to Motion due by 10/27/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.(Dukes, Richard) (Entered: 10/13/2021)

10/14/2021	43	MOTION for Protective Order , First MOTION to Quash (Response to Motion due by 10/28/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45.) by Bishop of the Diocese of Charleston, The. (Attachments: # 1 Exhibit A subpoena, # 2 Exhibit B amended subpoena to produce documents)No proposed order.(Shahid, Albert) Modified on 10/15/2021 to add descriptions to exhibits(sshe,). (Entered: 10/14/2021)
10/19/2021	44	First MOTION for Protective Order <i>and to Terminate, Limit Deposition of Bishop Robert Guglielmone</i> by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone. Response to Motion due by 11/2/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Exhibit A - Notice of Deposition, Subpoena, # 2 Exhibit B - Deposition Transcript)No proposed order.(Dukes, Richard) (Entered: 10/19/2021)
10/25/2021	45	RESPONSE in Opposition re 42 First MOTION for Protective Order <i>Regarding Testimony of Maria Aselage</i> , 43 MOTION for Protective Order First MOTION to Quash Response filed by Gary Nestler.Reply to Response to Motion due by 11/1/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Attachments: # 1 Exhibit Dep. R. Attansio Vol. II, # 2 Exhibit Dep. P. Finneran, # 3 Exhibit Exhibit to Aselage Dep., # 4 Exhibit Dep. M. Aselage) (Halversen, Brent) (Entered: 10/25/2021)
10/26/2021	46	Joint MOTION for Extension of Time <i>for Plaintiffs to file Motion for Protective Order regarding deposition of Mrs. Doe</i> by Gary Nestler, Viewed Student Female 200, Viewed Student Male 300. Response to Motion due by 11/9/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Proposed Order Proposed Consent Order)Proposed order is being emailed to chambers with copy to opposing counsel.(Richter, Lawrence) (Entered: 10/26/2021)
10/27/2021	47	TEXT ORDER granting 46 Motion for Extension of Time until 10/29/21 for Plaintiffs to file a Motion for Protective Order Regarding the Deposition of Mrs. Doe. AND IT IS SO ORDERED. Entered at the direction of the Honorable Richard Mark Gergel on 10/27/21.(Itap,) (Entered: 10/27/2021)
10/28/2021	48	MOTION for Protective Order by Gary Nestler, Viewed Student Female 200, Viewed Student Male 300. Response to Motion due by 11/12/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Exhibit Deposition Excerpts)No proposed order.(Richter, Lawrence) (Entered: 10/28/2021)
10/28/2021	49	DEFENDANT'S ID OF EXPERT WITNESSES by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone, Tortfeasors 1-10. (Attachments: # 1 Exhibit 1-Myles Glick, # 2 Exhibit 2- William Runyon)(Dukes, Richard) (Entered: 10/28/2021)
11/02/2021	50	RESPONSE in Opposition re 44 First MOTION for Protective Order <i>and to Terminate, Limit Deposition of Bishop Robert Guglielmone Plaintiffs'</i> Response filed by Gary Nestler, Viewed Student Female 200, Viewed Student Male 300.Reply to Response to Motion due by 11/9/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Attachments: # 1 Exhibit Transcript of Bishop Guglielmone's deposition, # 2 Exhibit Defendants' Interrogatories to Plaintiff Tuition Payer 100, # 3 Exhibit Defendants' Interrogatories to Viewed Student Female

		200, # 4 Exhibit Defendants' Interrogatories to Viewed Student Male 300, # 5 Exhibit Plaintiff Tuition Payer 100 Answers to Defendants' Interrogatories, # 6 Exhibit Plaintiff Viewed Student Female 200 Answers to Interrogatories, # 7 Exhibit Plaintiff Viewed Student Male 300 Answers to Defendants' Interrogatories, # 8 Exhibit Plaintiffs' First Set of Interrogatories to Bishop Guglielmone, individually, # 9 Exhibit Defendant Bishop Guglielmone's Answers to Interrogatories)(Richter, Lawrence) (Entered: 11/02/2021)
11/03/2021	51	ORDER AND OPINION: The Court DENIES Defendants motion for protective order regarding the testimony of Maria Aselage (Dkt. No. 42). The Court also DENIES Aselages motion for order of protection and to quash subpoena. (Dkt. No. 43). The Court further ORDERS Plaintiffs and Defendants to, by November 12, 2021, meet and confer, schedule, reconvene and complete the deposition of Aselage in accordance with this Order. By this date, Aselage shall also respond to Plaintiffs October 13, 2021 document request to Aselage and Hearsay Communications.AND IT SO ORDERED. Signed by Honorable Richard M Gergel on 11/3/21.(ltap,) Modified document type (opinion) on 11/4/2021 (sshe,). (Entered: 11/03/2021)
11/05/2021	52	Joint MOTION for Extension of Time by Gary Nestler, Viewed Student Female 200, Viewed Student Male 300. Response to Motion due by 11/19/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Proposed Order Proposed Consent Order)Proposed order is being emailed to chambers with copy to opposing counsel.(Richter, Lawrence) (Entered: 11/05/2021)
11/09/2021	53	REPLY to Response to Motion re 44 First MOTION for Protective Order <i>and to Terminate, Limit Deposition of Bishop Robert Guglielmone</i> Response filed by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone, Tortfeasors 1-10.(Dukes, Richard) Filing corrected for event type (sshe,) (Entered: 11/10/2021)
11/10/2021	54	Fourth Amended Scheduling Order: Class certification discovery is due by 12/3/21. Motions for Class Certification are due by 12/13/21. AND IT IS SO ORDERED. Signed by Honorable Richard M Gergel on 11/10/21.(ltap,) (Entered: 11/10/2021)
11/12/2021	55	MOTION for Protective Order <i>Regarding Redacted Portions of Maria Aselage Emails</i> by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone, Tortfeasors 1-10. Response to Motion due by 11/29/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Exhibit Exhibit A-Redaction Log)No proposed order.(Dukes, Richard) (Entered: 11/12/2021)
11/12/2021	56	ORDER: For the reasons stated above, the Court GRANTS IN PART AND DENIES IN PART Defendants motion to terminate or limit the deposition of Bishop Robert Guglielmone and motion for protective order (Dkt. No. 44). In accordance with this Order, on or before November 22, 2021, the parties shall meet and confer, schedule, reconvene, and complete Deponents deposition.AND IT SO ORDERED. Signed by Honorable Richard M Gergel on 11/12/21.(ltap,) (Entered: 11/12/2021)

11/12/2021	57	TEXT ORDER re 55 MOTION for Protective Order. The time to file a response to motion is shortened to 11/19/21. AND IT IS SO ORDERED. Entered at the direction of the Honorable Richard M Gergel on 11/12/21. (ltap,) (Entered: 11/12/2021)
11/17/2021	58	ORDER: Having reviewed Plaintiffs motion, the deposition excerpts attached, and the lack of opposition from Defendants, the Court GRANTS Plaintiffs motion for protective order regarding testimony of Mrs. Doe. (Dkt. No. 48).AND IT SO ORDERED. Signed by Honorable Richard M Gergel on 11/17/21.(ltap,) (Entered: 11/17/2021)
11/18/2021	59	RESPONSE in Opposition re 55 MOTION for Protective Order <i>Regarding Redacted Portions of Maria Aselage Emails</i> Response filed by Gary Nestler, Viewed Student Female 200, Viewed Student Male 300.Reply to Response to Motion due by 11/29/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Attachments: # 1 Exhibit 11/4/21 email from Brent Halversen to Peter Shahid, # 2 Exhibit Emails, # 3 Exhibit 11/9/21 email from Peter Shahid to Dan Slotchiver, # 4 Exhibit Deposition transcript of Maria Aselage 11/12/21)(Richter, Lawrence) (Entered: 11/18/2021)
11/23/2021	61	MOTION for Protective Order by Maria Aselage. Response to Motion due by 12/7/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Exhibit A re production of privilege log of redacted documents to Plaintiff's counsel)No proposed order.(Shahid, Albert) Modified on 11/29/2021 to add description(s) for exhibit(s)(sshe,). (Entered: 11/23/2021)
11/29/2021	62	MOTION for Protective Order <i>Regarding Reconvened Deposition of Bishop Guglielmone</i> by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone, Tortfeasors 1-10. Response to Motion due by 12/13/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Exhibit Exhibit 1: Deposition Transcript of Bishop Robert Guglielmone)No proposed order.(Dukes, Richard) (Entered: 11/29/2021)
12/01/2021	63	TEXT ORDER re 62 MOTION for Protective Order. The time to file a Response to Motion is shortened to 12/7/21. AND IT IS SO ORDERED. Entered at the direction of the Honorable Richard M Gergel on 12/1/21. (ltap,) (Entered: 12/01/2021)
12/02/2021	64	ORDER AND OPINION The Court DENIES Defendants motion for protective order. (Dkt. No. 55). Aselage must produce all subpoenaed documents in unredacted form on or before November 26, 2021. Further, on or before December 3, 2021, Aselage's deposition must be reconvened so that Plaintiffs may question her regarding the documents she was ordered to but did not produce. AND IT SO ORDERED. Signed by Honorable Richard M Gergel on 12/2/2021. (sshe,) (Entered: 12/02/2021)
12/02/2021	65	DELETION OF DOCKET ENTRY NUMBER 60 Reason: Order vacated per chambers, revised Order filed Corrected Filing Document Number 64 (sshe,) (Entered: 12/02/2021)

12/07/2021	66	RESPONSE in Opposition re 62 MOTION for Protective Order <i>Regarding Reconvened Deposition of Bishop Guglielmone</i> Response filed by Gary Nestler, Viewed Student Female 200, Viewed Student Male 300. Reply to Response to Motion due by 12/14/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Attachments: # 1 Exhibit Email from Court Reporter, # 2 Exhibit Diocese sex abuse policy, # 3 Exhibit Excerpts of Bishop's deposition from state cases re always a priest, # 4 Exhibit Excerpts of Bishop's deposition from state cases - sex abuse policy, # 5 Exhibit Deposition transcript of Bishop Guglielmone 11/22/21, # 6 Exhibit 2017-2018 BEHS Faculty Handbook excerpts, # 7 Exhibit 2018-2019 BEHS Faculty Handbook excerpts, # 8 Exhibit Spoliation letter, # 9 Exhibit BEHS Answer to Interrogatory #20, # 10 Exhibit Excerpts of Bishop's deposition from state cases - sex abuse advisory board, # 11 Exhibit Defendants' Updated Fifth Supplemental Answers to Interrogatories)(Richter, Lawrence) (Entered: 12/07/2021)
12/13/2021	67	MOTION to Certify Class by Gary Nestler, Viewed Student Female 200, Viewed Student Male 300. Response to Motion due by 12/29/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Exhibit Deposition transcript Mary Anne Tucker, # 2 Exhibit Deposition transcript Roger Attanasio Vol. II, # 3 Exhibit Deposition transcript Patrick Finneran, # 4 Exhibit Deposition transcript Dr. Amanda Salas, # 5 Exhibit Deposition transcript 30b6 BEHS Patrick Finneran, # 6 Exhibit Exhibit 1 to Maria Aselage deposition, # 7 Exhibit Deposition transcript Eric Aichele, # 8 Exhibit BEHS's Answers to Plaintiffs' First Interrogatories, # 9 Exhibit Deposition transcript Maria Aselage Vol. III, # 10 Exhibit Plaintiffs' First Requests for Admission to BEHS, # 11 Exhibit Part 1 of Exhibit 3 to Patrick Finneran deposition, # 12 Exhibit Part 2 of Exhibit 3 to Patrick Finneran deposition, # 13 Exhibit Deposition transcript Nathaniel Pearson, # 14 Exhibit Deposition transcript Jeremy Carrick, # 15 Exhibit Deposition transcript Deon Richardson, # 16 Exhibit Deposition transcript Maria Williams, # 17 Exhibit BEHS's Supplemental Answers to Plaintiffs' First Interrogatories, # 18 Exhibit Deposition Transcript Male Student, # 19 Exhibit Deposition Transcript Female Student, # 20 Exhibit BEHS website, # 21 Exhibit Deposition transcript Gary Nestler, # 22 Exhibit Statement of Qualifications of Proposed Class Counsel)No proposed order.(Richter, Lawrence) (Entered: 12/13/2021)
12/13/2021	68	REPLY to Response to Motion re 62 MOTION for Protective Order <i>Regarding Reconvened Deposition of Bishop Guglielmone</i> Response filed by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone, Tortfeasors 1-10. (Dukes, Richard) (Entered: 12/13/2021)
12/14/2021	69	ORDER: The Court GRANTS IN PART AND DENIES IN PART Defendants motion for protective order regarding reconvened deposition of Bishop Guglielmone (Dkt. No. 62).AND IT SO ORDERED. Signed by Honorable Richard M Gergel on 12/14/21.(ltap,) (Entered: 12/14/2021)
12/14/2021	70	TEXT ORDER: Before the Court is nonparty Maria Aselages motion for protective order. (Dkt. No. 61). Plaintiffs do not oppose the motion. The motion is granted as to questions regarding the production of documents on November 12, 2021. (Id. at 4). The remainder of the motion is denied as moot in light of (Dkt. No. 64). AND IT IS SO ORDERED. Entered at the direction of the Honorable Richard M Gergel on 12/14/21.(ltap,) (Entered: 12/14/2021)

12/14/2021	71	MOTION for Extension of Time to File Response/Reply as to 67 MOTION to Certify Class by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone, Tortfeasors 1-10. Response to Motion due by 12/29/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Proposed Order Proposed Order Granting Defendants' Motion for Extension of Time to File a Response to Motion for Class Certification) Proposed order is being emailed to chambers with copy to opposing counsel.(Dukes, Richard) (Entered: 12/14/2021)
12/15/2021	72	TEXT ORDER re 71 MOTION for Extension of Time to File Response/Reply as to 67 MOTION to Certify Class. The time to file a response to this motion is shortened to 12:00 noon on December 17, 2021. AND IT IS SO ORDERED. Entered at the direction of the Honorable Richard M Gergel on 12/15/21. (ltap,) (Entered: 12/15/2021)
12/15/2021	73	REPLY to Response to Motion re 71 MOTION for Extension of Time to File Response/Reply as to 67 MOTION to Certify Class Response filed by Gary Nestler. (Slotchiver, Daniel) (Entered: 12/15/2021)
12/16/2021	74	TEXT ORDER: Defendants have moved for an extension until 1/19/22 to respond to Plaintiffs motion for class certification. (Dkt. No. 71). Plaintiffs consent to an extension of time for Defendants to respond to 1/12/22. (Dkt. No. 73). For good cause shown, the Defendants motion for an extension of time until 1/19/22 is granted. AND IT IS SO ORDERED. Entered at the direction of the Honorable Richard M Gergel on 12/16/21.(ltap,) (Entered: 12/16/2021)
01/19/2022	75	RESPONSE in Opposition re 67 MOTION to Certify Class Response filed by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone, Tortfeasors 1-10.Reply to Response to Motion due by 1/26/2022 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Attachments: # 1 Exhibit Exhibit 1- LS3P locker room design drawing, # 2 Exhibit Exhibit 2- Excerpts from Amanda Salas, M.D.'s Deposition Transcript, # 3 Exhibit Exhibit 3- Miles Glick's Report, # 4 Exhibit Exhibit 4- William Runyon's Report, # 5 Exhibit Exhibit 5-Excerpts from Male Student's Deposition Transcript, # 6 Exhibit Exhibit 6- Excerpts from Female Student's Deposition Transcript, # 7 Exhibit Exhibit 7- Excerpts from Eric Aichele's Deposition Transcript, # 8 Exhibit Exhibit 8- Excerpts from Gary Nestler's Deposition Transcript, # 9 Exhibit Exhibit 9- Excerpts from Mary Anne Tucker's Deposition Transcript, # 10 Exhibit Exhibit 10- Excerpts from Patrick Finneran's Deposition Transcript, # 11 Exhibit Exhibit 11- Excerpts from LS3P 30(b)(6)'s Deposition Transcript; session two, # 12 Exhibit Exhibit 12- Bigelow v. Syneos Health, LLC)(Dukes, Richard) (Entered: 01/19/2022)
01/20/2022	76	NOTICE of Request for Protection from Court Appearance by Daniel Scott Slotchiver for April 28, 2022 - May 3, 2022 Associated Cases: 2:21-cv-00613-RMG, 2:21-cv-00020-RMG(Slotchiver, Daniel) (Entered: 01/20/2022)
01/25/2022	77	NOTICE of Request for Protection from Court Appearance by Richard S Dukes, Jr for March 5, 2022 through March 11, 2022 & May 6, 2022 through May 18, 2022 (Dukes, Richard) (Entered: 01/25/2022)
01/26/2022	78	REPLY to Response to Motion re 67 MOTION to Certify Class <i>PLAINTIFFS REPLY TO DEFENDANTS OBJECTION TO PLAINTIFF MOTION FOR CLASS CERTIFICATION</i> Response filed by Gary Nestler. (Slotchiver, Daniel) (Entered: 01/26/2022)

		01/26/2022)
01/26/2022	79	TEXT ORDER re 77 Notice of Request for Protection from Court Appearance filed by Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone, Bishop England High School, Tortfeasors 1-10, 76 Notice of Request for Protection from Court Appearance filed by Gary Nestler. Counsel should please know the protection requests are duly noted and take under advisement. Entered at the Direction of Honorable Richard M Gergel on 1/26/2022. (sshe,) (Entered: 01/26/2022)
01/28/2022	80	MOTION for Leave to File <i>Surreply Regarding Class Certification</i> by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone, Tortfeasors 1-10. Response to Motion due by 2/11/2022. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Exhibit Exhibit 1- Proposed surreply regarding class certification, # 2 Exhibit Exhibit A- Deposition of Statement of Counsel, # 3 Exhibit Exhibit B- Correspondence to Dan Slotchiver on 11-09-21, # 4 Exhibit Exhibit C- Correspondence to Dan Slotchiver on 01-05-22)No proposed order.(Dukes, Richard) (Entered: 01/28/2022)
01/31/2022	81	REPLY to Response to Motion re 80 MOTION for Leave to File <i>Surreply Regarding Class Certification</i> Response filed by Gary Nestler. (Slotchiver, Daniel) (Entered: 01/31/2022)
02/01/2022	82	TEXT ORDER For good cause shown, the motion of Defendant to file a sur-reply brief is granted. (Dkt. No. 80). AND IT IS SO ORDERED. Entered at the Direction of Honorable Richard M Gergel on 1/31/2022.(sshe,) (Entered: 02/01/2022)
02/01/2022	83	SUR REPLY to REPLY to Response to Motion re 67 MOTION to Certify Class Response filed by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone, Tortfeasors 1-10. (Attachments: # 1 Exhibit Exhibit A- Deposition Transcript of Statement of Counsel, # 2 Exhibit Exhibit B- RSD letter to Dan Slotchiver regarding expert depositions on 11-09-2021, # 3 Exhibit Exhibit C- RSD follow up letter to Dan Slotchiver regarding expert depositions on 01-05-2022)(Dukes, Richard) (Entered: 02/01/2022)
03/24/2022	84	ORDER AND OPINION denying 67 Motion to Certify Class. AND IT IS SO ORDERED. Signed by Honorable Richard M Gergel on 3/24/22.(ltap,) Modified document type on 3/25/2022 (sshe,). (Entered: 03/24/2022)
04/08/2022	85	MOTION for Summary Judgment by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone, Tortfeasors 1-10. Response to Motion due by 4/22/2022. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.(Dukes, Richard) (Entered: 04/08/2022)
04/19/2022	86	Joint MOTION for Extension of Time to File Response/Reply as to 85 MOTION for Summary Judgment by Gary Nestler, Viewed Student Female 200, Viewed Student Male 300. Response to Motion due by 5/3/2022. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Proposed Order Proposed Order granting extension of time)Proposed order is being emailed to chambers with copy to opposing counsel. (Richter, Lawrence) (Entered: 04/19/2022)

04/19/2022	<u>87</u>	ORDER granting <u>86</u> Joint MOTION for Extension of Time to File Response/Reply as to <u>85</u> MOTION for Summary Judgment. Response to Motion due by 5/22/2022. AND IT IS SO ORDERED. Signed by Honorable Richard M Gergel on 4/19/22.(ltap,) (Entered: 04/19/2022)
04/21/2022	<u>88</u>	MOTION for Reconsideration re <u>84</u> Order on Motion to Certify Class by Gary Nestler, Viewed Student Female 200, Viewed Student Male 300. Response to Motion due by 5/5/2022. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.(Richter, Lawrence) (Entered: 04/21/2022)
04/21/2022	<u>89</u>	MOTION To Certify Question to the Supreme Court of South Carolina by Gary Nestler, Viewed Student Female 200, Viewed Student Male 300. Response to Motion due by 5/5/2022. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Memo in Support, # <u>2</u> Exhibit Transcript of Record 6/9/20)No proposed order.(Richter, Lawrence) (Entered: 04/21/2022)
05/04/2022	<u>90</u>	RESPONSE in Opposition re <u>88</u> MOTION for Reconsideration re <u>84</u> Order on Motion to Certify Class Response filed by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone, Tortfeasors 1-10.Reply to Response to Motion due by 5/11/2022 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Dukes, Richard) (Entered: 05/04/2022)
05/04/2022	<u>91</u>	RESPONSE in Opposition re <u>89</u> MOTION To Certify Question to the Supreme Court of South Carolina Response filed by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone, Tortfeasors 1-10.Reply to Response to Motion due by 5/11/2022 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Dukes, Richard) (Entered: 05/04/2022)
05/11/2022	<u>92</u>	REPLY to Response to Motion re <u>89</u> MOTION To Certify Question to the Supreme Court of South Carolina Response filed by Gary Nestler, Viewed Student Female 200, Viewed Student Male 300. (Richter, Lawrence) (Entered: 05/11/2022)
05/11/2022	<u>93</u>	REPLY to Response to Motion re <u>88</u> MOTION for Reconsideration re <u>84</u> Order on Motion to Certify Class Response filed by Gary Nestler, Viewed Student Female 200, Viewed Student Male 300. (Attachments: # <u>1</u> Exhibit Press Release, # <u>2</u> Exhibit Finneran depo excerpts 10.5.21, # <u>3</u> Exhibit Defendant BEHS Answers to Interrogatories, # <u>4</u> Exhibit Finneran depo excerpts 10.22.21, # <u>5</u> Exhibit Finneran correspondence)(Richter, Lawrence) (Entered: 05/11/2022)
05/19/2022	<u>94</u>	MOTION for Extension of Time to File Response/Reply as to <u>85</u> MOTION for Summary Judgment by Gary Nestler, Viewed Student Female 200, Viewed Student Male 300. Response to Motion due by 6/2/2022. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Exhibit Correspondence with opposing counsel, # <u>2</u> Proposed Order Proposed Order)Proposed order is being emailed to chambers with copy to opposing counsel.(Richter, Lawrence) (Entered: 05/19/2022)
05/24/2022	<u>95</u>	ORDER : Plaintiffs' motion for reconsideration (Dkt. No. 88) and Plaintiff's motion to certify question (Dkt. No. 89) are DENIED. AND IT IS SO ORDERED. Signed by Honorable Richard M Gergel on 5/24/22.(ltap,) (Entered: 05/24/2022)

05/24/2022	96	TEXT ORDER granting 94 Motion for Extension of Time to File Response/Reply to to 85 MOTION for Summary Judgment to the extent that Plaintiffs have until 6/6/22 to file a response. AND IT IS SO ORDERED. Entered at the direction of the Honorable Richard M Gergel on 5/24/22.(ltap,) (Entered: 05/24/2022)
06/06/2022	98	RESPONSE in Opposition re 85 MOTION for Summary Judgment Response filed by Gary Nestler, Viewed Student Female 200, Viewed Student Male 300.Reply to Response to Motion due by 6/13/2022 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Attachments: # 1 Exhibit Press Release, # 2 Exhibit Finneran depo excerpts 10.5.21, # 3 Exhibit BEHS Answers to Interrogatories, # 4 Exhibit Photograph, # 5 Exhibit Transcript of record 6.9.20, # 6 Exhibit Spoliation letter, # 7 Exhibit Finneran depo excerpts 10.5.21 re spoliation, # 8 Exhibit Diocese Defendants' Responses to Requests for Production, # 9 Exhibit Dr. Amanda Salas deposition transcript)(Richter, Lawrence) (Entered: 06/06/2022)
06/13/2022	99	RESPONSE in Support re 85 MOTION for Summary Judgment Response filed by Bishop England High School, Bishop of Charleston, The, Bishop of the Diocese of Charleston, The, Robert Guglielmone, Tortfeasors 1-10. (Dukes, Richard) (Entered: 06/13/2022)
06/17/2022	100	ORDER: Defendants motion for summary judgment (Dkt. No. 85) is granted. The Clerk is directed to close this case. AND IT IS SO ORDERED. Signed by Honorable Richard M Gergel on 6/17/22.(ltap,) (Entered: 06/17/2022)
07/12/2022	101	NOTICE OF APPEAL as to 100 Order on Motion for Summary Judgment by Gary Nestler, Viewed Student Female 200, Viewed Student Male 300. - Filing fee \$ 505, receipt number ASCDC-10587544. The Docketing Statement form, Transcript Order form and CJA 24 form may be obtained from the Fourth Circuit website at www.ca4.uscourts.gov (Richter, Lawrence) (Entered: 07/12/2022)
07/13/2022	102	Transmittal Sheet for Notice of Appeal to USCA re 101 Notice of Appeal, The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (sshe,) (Entered: 07/13/2022)
07/20/2022	104	ORDER of USCA denying the petition for permission to appeal as to 101 Notice of Appeal, filed by Gary Nestler, Viewed Student Male 300, Viewed Student Female 200 (sshe,) (Entered: 07/20/2022)

PACER Service Center			
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09/30/2022 14:53:43			
PACER Login:	Lantagne92	Client Code:	
Description:	Docket Report	Search Criteria:	2:21-cv-00613-RMG
Billable Pages:	16	Cost:	1.60

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Tuition Payer 100, Viewed Student Female
200, Viewed Student Male 300, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

The Bishop of Charleston, a Corporation Sole,
Bishop England High School, Tortfeasors 1-
10, The Bishop of the Diocese of Charleston,
in his official capacity, and Robert
Guglielmone, individually,

Defendants.

C/A No. 2:21-cv-613-RMG

NOTICE OF REMOVAL

TO: THE HONORABLE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, CHARLESTON DIVISION; THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT, BERKELEY COUNTY, SOUTH CAROLINA; AND ALL PARTIES AND ATTORNEYS OF RECORD:

YOU WILL PLEASE TAKE NOTICE that Defendants, The Bishop of Charleston, a Corporation Sole, Bishop England High School, The Bishop of the Diocese of Charleston, in his official capacity, and Robert Guglielmone, individually, hereby invoke the removal jurisdiction of the United States District Court for the District of South Carolina, Charleston Division pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1446, 1453(b), and Local Civil Rules 83.IV.01 and 83.IV.02, based upon the following:

1. Plaintiffs commenced this action by filing the Summons and Complaint with the South Carolina Court of Common Pleas for Berkeley County on February 3, 2021. *See* Civil

Action No.: 2021-CP-08-00256. A copy of all process, if any, and pleadings filed in the state court action is attached hereto as Exhibit A.

2. This action is currently pending in the Court of Common Pleas for Berkeley County, South Carolina, located within the Charleston Division of this Court. The named Defendants were served on February 4, 2021; thus, this removal is timely. The identities of fictitious parties may be ignored.

3. This action is removable to this Court pursuant to 28 U.S.C. § 1453(b) as a class action. Removal pursuant to Section 1453(b) is without regard to whether any defendant is a citizen of the State in which the action is brought, and such action may be removed by any defendant without consent of all defendants. Accordingly, no joinder or consent by any other defendant, including the as yet unnamed Tortfeasors 1-10 Defendants named in this action, is required for this removal.

4. This action is removable to this Court pursuant to 28 U.S.C. § 1332(d)(2) as a class action. Congress conferred subject matter jurisdiction upon federal courts over class actions in which there are more than 100 putative class members who seek to recover in excess of Five Million and 00/100 Dollars (\$5,000,000.00) in the aggregate, and in which “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). The citizenship of a corporation is determined by the State in which it is incorporated and the State in which it has its principal place of business. *See id.*, 28 U.S.C. § 1331(c)(1).

5. At the time of the commencement of this action and of the filing of this Notice of Removal, the Bishop of South Carolina, a Corporation Sole, is organized and exists pursuant to the laws of the State of South Carolina and has its principal place of business in this State.

6. At the time of the commencement of this action and of the filing of this Notice of Removal, the Bishop of the Diocese of Charleston is an individual who is a resident and citizen of the State of South Carolina.

7. At the time of the commencement of this action and of the filing of this Notice of Removal, Bishop England High School is an operation of Bishop of Charleston, a Corporation Sole, and has no separate legal existence.

8. At the time of the commencement of this action and of the filing of this Notice of Removal, Robert Guglielmone is an individual who is a resident and citizen of the State of South Carolina.

9. At the time of the commencement of this action and of the filing of this Notice of Removal, one or more members of the putative classes identified in Plaintiffs' Complaint are citizens of a State or States other than South Carolina. *See* Decl. of Patrick Finneran attached hereto as Exhibit B. According to Plaintiffs' Complaint, the allegedly tortious conduct occurred for at least two decades, at least since 1998. Pls.' Compl. ¶ 1. Moreover, Plaintiff's Complaint lists Tuition Payer 100, Viewed Student Female 200, and Viewed Student Male 300 as "named" Plaintiffs. Further, Plaintiffs allege "the number of members of each Class is likely to exceed 100 persons, perhaps several hundreds or even a thousand or more individuals. . . ." *Id.* at ¶ 62. Thus, a fair reading of Plaintiffs' Complaint is that the members of each of the proposed classes of Plaintiffs exceed 100. *See* U.S.C. § 1332(d)(5).

10. Inasmuch as Defendants are South Carolina citizens and at least one putative class member is a citizen of a State other than South Carolina, the minimal diversity requirement of 28 U.S.C. § 1332(d)(2)(A) is satisfied.

11. The amount in controversy required by 28 U.S.C. § 1332(d)(2) also is met. Pursuant to 28 U.S.C. § 1332(d)(6), claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000.00, exclusive of interest and costs. Based upon the allegations contained in the Complaint, which Defendants deny, the amount in controversy clearly exceeds \$5,000,000.00. Specifically, Plaintiffs seek to certify a “tuition class” that claims damages of One Hundred Fifty Million and 00/100 Dollars (\$150,000,000.00) and a “viewed class” that also claims damages of One Hundred Fifty Million and 00/100 Dollars (\$150,000,000.00). *See* Compl. ¶¶ 21-22.

12. The United States District Court for the District of South Carolina, Charleston Division, encompasses the place where this action is pending in state court and is, therefore, an appropriate venue pursuant to 28 U.S.C. § 1391(a)(2) and 28 U.S.C. § 95(a)(2).

13. As required by 28 U.S.C. § 1446(d), written Notice of Removal is being given to all adverse parties and a copy of the Notice is being filed with the Clerk of the South Carolina Court of Common Pleas for Berkeley County.

14. In accordance with 28 U.S.C. § 1446(d), the Clerk of Court from which this action is removed has been served with a copy of the Notice of Removal.

WHEREFORE, the Defendants, by counsel, give notice that the within civil action, previously pending in the South Carolina Court of Common Pleas for Berkeley County has been removed to the United States District Court for District of South Carolina, Charleston Division.

(Signature page to follow)

Respectfully submitted,

TURNER, PADGET, GRAHAM & LANEY, P.A.

March 3, 2021

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ATTORNEYS FOR DIOCESE DEFENDANTS

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Tuition Payer 100, Viewed Student Female
200, Viewed Student Male 300, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

The Bishop of Charleston, a Corporation Sole,
Bishop England High School, Tortfeasors 1-
10, The Bishop of the Diocese of Charleston,
in his official capacity, and Robert
Guglielmone, individually,

Defendants.

C/A NO. 2:21-cv-613-RMG

DEFENDANTS' RULE 26.01
DISCLOSURES

Defendants The Bishop of Charleston, a Corporation Sole, Bishop England High School, Tortfeasors 1-10, The Bishop of the Diocese of Charleston, in his official capacity, and Robert Guglielmone, individually (hereinafter "Diocese") submit the following Disclosures pursuant to Local Rule 26.01:

(A) State the full name, address and telephone number of all persons or legal entities who may have a subrogation interest in each claim and state the basis and extent of said interest.

ANSWER: None at this time.

(B) As to each claim, state whether it should be tried jury or nonjury and why.

ANSWER: Plaintiffs have demanded a jury trial.

(C) State whether the party submitting these responses is a publicly owned company and separately identify: (1) each publicly owned company of which it is a parent, subsidiary, partier, or affiliate; (2) each publicly owned company which owns ten percent or more of the

outstanding shares or other indicia of ownership of the party; and (3) each publicly owned company in which the party owns ten percent or more of the outstanding shares.

ANSWER: No defendant is publicly held.

(D) State the basis for asserting the claim in the division in which it was filed (or the basis of any challenge to the appropriateness of the division).

ANSWER: Bishop England High School is located in the Charleston Division.

(E) Is this action related in whole or in part to any other matter filed in this District, whether civil or criminal? If so, provide: (1) a short caption and the full case number of the related action; (2) an explanation of how the matters are related; and (3) a statement of the status of the related action. Counsel should disclose any cases which may be related such that they should be assigned to a single judge will be determined by the Clerk of Court based on determination of whether the cases; arise from the same or identical transaction, happenings or events; involve the identical parties or property; or for any other reason would entail substantial duplication of labor if heard by different judges.

ANSWER: No.

(F) If the Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct identification.

ANSWER: Bishop of Charleston, a Corporation Sole is the correct identity of the civil law presence and existence of the Roman Catholic Diocese of Charleston. The Diocese is formed pursuant to Canon Law and has no civil law presence aside from the Corporation Sole.

Bishop England High School is a ministry, mission, and operation of the Diocese of Charleston, which itself is the ecclesiastical presence of the Roman Catholic Church in the State of South Carolina. BEHS is not a separate legal entity, but rather is subject to the authority of the Bishop of Charleston. BEHS exists solely as part of the Corporation Sole.

Most Rev. Robert Guglielmone is the Bishop of Charleston.

The ecclesiastical office of Bishop of Charleston is a canonical and ecclesiastical office and is not a civil law entity.

(G) If you contend that some other person or legal entity is, in whole or in part, liable to you or the party asserting a claim against you in this matter, identify such person or entity and describe the basis of said liability.

ANSWER: The Diocese is not aware of any person or legal entity that is liable to it or who is asserting a claim against the Plaintiffs at this time.

TURNER, PADGET, GRAHAM & LANEY, P.A.

March 3, 2021

By: s/ Carmelo B. Sammataro

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ATTORNEYS FOR DIOCESE DEFENDANTS

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Tuition Payer 100, Viewed Student Female
200, Viewed Student Male 300, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

The Bishop of Charleston, a Corporation Sole,
Bishop England High School, Tortfeasors 1-
10, The Bishop of the Diocese of Charleston,
in his official capacity, and Robert
Guglielmone, individually,

Defendants.

C/A: 2-21-cv-00613-RMG

ANSWER OF DEFENDANTS

Now come Defendants, the Bishop of Charleston, a Corporation Sole, Bishop England High School, the Bishop of the Diocese of Charleston, in his official capacity, and Most. Rev. Robert Guglielmone, (collectively referred to as “the Diocese” unless the context indicates otherwise) who answer Plaintiffs’ Complaint as follows:

The Defendants deny the unnumbered preamble of the Complaint.

FOR A FIRST DEFENSE

I. OVERVIEW OF THIS ACTION

1. The Diocese admits only that Bishop England was designed with the safety of students and visitors in mind and that the locker room windows were a safety feature to allow adults to monitor the changing areas for bullying, fighting, or other misbehavior. The Diocese relied on the advice of professionals regarding the design and construction of Bishop England High School. The design complied with the relevant standard of care and comported with safeguarding

the safety of those using the locker rooms. All remaining allegations contained in Paragraph 1 are denied.

2. Denied.

3. Admitted upon information and belief.

4. Defendants admit only that, in May, 2019, the Diocese reported Jeffrey Scofield to City of Charleston Police. Scofield was arrested immediately and terminated from his employment. All remaining allegations contained in Paragraph 4 are denied.

5. The Diocese is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 5 and, on that basis, denies same.

6. The Diocese admits only that it is a leading moral and religious institution that has, as one of its primary missions, evangelization through education of young people. The Diocese and BEHS strive to provide a safe, moral, and nurturing educational environment based on the teachings of the Catholic Church. All remaining allegations contained in Paragraph 6 are denied.

7. Denied as pleaded.

8. The Diocese admits only that Bishop England was designed with the safety of students and visitors in mind and that the locker room windows were a safety feature to allow adults to monitor the changing areas for bullying, fighting, or other misbehavior. The Diocese also admits that students are required to take physical education classes and that student athletes regularly change in the locker rooms. All remaining allegations in Paragraph 8 are denied.

9. The Diocese admits only that there is a small window in the doors of the coaches' offices, which could allow someone to look in the office. All remaining allegations contained in Paragraph 9 are denied.

10. Admitted upon information and belief.

11. The Diocese admits only that there is a small window in the doors of the coaches' offices, which could allow someone to look in the office. All remaining allegations contained in Paragraph 11 are denied.

12. Denied.

13. Denied as pleaded.

14. Denied.

15. By way of answer to the allegations contained in Paragraph 15, the Diocese admits only that the documents attached to the Complaint as Exhibits 3 and 4 say what they say. Any further allegation contained in Paragraph 15 is denied.

16. By way of answer to the allegations contained in Paragraph 16, the Diocese relied on the advice of professionals regarding the design and construction of Bishop England High School. The design complied with the relevant standard of care and comported with safeguarding the safety of those using the locker rooms. The Diocese admits that blinds were installed in the coaches' offices. All remaining allegations contained in Paragraph 16 are denied.

17. The Diocese is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 17 and, on that basis, denies same.

18. The Diocese is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 18 and, on that basis, denies same.

19. By way of answer to Paragraph 19, the Diocese denies that class treatment is appropriate in any respect. All remaining allegations are denied.

20. Denied.

21. Denied.

22. Denied.

II. JURISDICTION

23. The Diocese admits only that the civil law presence of the ecclesiastical body of the Roman Catholic Church in the State of South Carolina is though Bishop of Charleston, a Corporation Sole. The authority of the person holding the office of Bishop is established under the Catholic Church's Code of Canon Law. All remaining allegations contained in Paragraph 23 are denied.

24. Bishop of Charleston, a Corporation Sole, and Bishop Guglielmone admit the allegations contained in Paragraph 24. The remaining Defendants are without sufficient knowledge or information to form a belief as to the allegations and, on that basis, deny same.

25. Bishop of Charleston, a Corporation Sole, and Bishop Guglielmone admit the allegations contained in Paragraph 25. The remaining Defendants are without sufficient knowledge or information to form a belief as to the allegations and, on that basis, deny same.

26. Bishop England High School is an operation, ministry, and mission of Bishop of Charleston, a Corporation Sole. The school is located in Berkeley County.

27. Bishop England High School is an operation, ministry, and mission of Bishop of Charleston, a Corporation Sole. The Diocese admits the accuracy of Exhibits 5, 6, and 7 to the Complaint. All remaining allegations contained in Paragraph 27 are denied.

28. The Diocese admits only that BEHS is a Diocesan high school and ministry of the Roman Catholic Diocese of Charleston whose formal presence in civil law is Bishop of Charleston, a Corporation Sole. All remaining allegations contained in Paragraph 28 are denied.

29. The Diocese admits only that BEHS is a Diocesan high school and ministry of the Roman Catholic Diocese of Charleston whose formal presence in civil law is Bishop of Charleston, a Corporation Sole. All remaining allegations contained in Paragraph 29 are denied.

30. The Diocese admits only that BEHS is a Diocesan high school and ministry of the Roman Catholic Diocese of Charleston whose formal presence in civil law is Bishop of Charleston, a Corporation Sole. All remaining allegations contained in Paragraph 30 are denied.

31. The Diocese admits only that BEHS is a Diocesan high school and ministry of the Roman Catholic Diocese of Charleston whose formal presence in civil law is Bishop of Charleston, a Corporation Sole. The Diocese has offices in Charleston County and has a superintendent of education whose offices are in Charleston County. All remaining allegations contained in Paragraph 31 are denied.

32. The Diocese is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 32 and, on that basis, denies same.

33. Admitted upon information and belief.

34. Admitted.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. Admitted. The Diocese further asserts that jurisdiction and venue are proper in the District of South Carolina, Charleston Division.

FACTUAL SUMMARY OF KNOWN VOYEURISM

41. Admitted upon information and belief.

42. Admitted.

43. The Diocese admits only that Scofield used one of the coaches' offices that had a window overlooking the boys' locker room. The Diocese relied on professionals to design appropriate facilities and safety features in the building and the structure was built to those specifications. All remaining allegations contained in Paragraph 43 are denied.

44. The Diocese admits only that students used the locker rooms at BEHS. The toilet and shower areas are not visible from the coaches' offices. All remaining allegations contained in Paragraph 44 are denied.

45. Admitted.

46. The Diocese admits only that it complied with South Carolina law and reported Scofield to appropriate authorities, after which he was arrested and charged. All remaining allegations contained in Paragraph 46 are denied.

47. The Diocese admits only that the parents of the boys whom Scofield taped were notified of the incident. All remaining allegations contained in Paragraph 47 are denied.

48. The Diocese admits that the news media covered the incident. All remaining allegations in Paragraph 48 are denied.

49. The Diocese is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 49 and, on that basis, denies same.

50. The Diocese admits that Scofield took photographs using his personal iPhone and that those images were synced to an iPad owned by the school. All remaining allegations contained in Paragraph 50 are denied.

51. By way of answer to the allegations in Paragraph 51, the Diocese admits that law enforcement investigated Scofield for his criminal activity. All remaining allegations are denied.

52. Denied.

53. The Diocese admits only that it relied on professionals to design appropriate facilities and safety features in the BEHS building and the structure was built to those specifications. All remaining allegations contained in Paragraph 53 are denied.

54. By way of answer to the allegations contained in Paragraph 54, the Diocese admits that Scofield was employed at BEHS in some capacity for some period of time. At some point Scofield engaged in criminal misconduct outside the scope of that employment. All remaining allegations contained in Paragraph 54 are denied.

55. The Diocese admits only that it relied on professionals to design appropriate facilities and safety features in the BEHS building and the structure was built to those specifications. All remaining allegations contained in Paragraph 55 are denied.

56. The Diocese admits that Scofield was terminated immediately and that the subject windows were covered. All remaining allegations contained in Paragraph 56 are denied.

**CLASS ALLEGATIONS AGAINST BISHOP ENGLAND, THE DIOCESE OF
CHARLESTON, AND THE BISHOP**

57. By way of answer to the allegations contained in Paragraph 57, the Diocese incorporates by reference Paragraphs 1 through 56 above as if restated fully herein.

58. The Diocese denies that class treatment is appropriate in this case. All allegations contained in Paragraph 58 are denied.

59. The Diocese denies that class treatment is appropriate in this case. All allegations contained in Paragraph 59 are denied.

60. Denied.

61. Denied.

62. Denied.

63. The Diocese denies the allegations contained in Paragraph 63 together with all subparts thereto.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

COUNT I

VIEWED CLASS WRONGFUL INTRUSION INTO PRIVATE AFFAIRS AGAINST THE DEFENDANTS

68. By way of answer to the allegations contained in Paragraph 68, the Diocese incorporates by reference Paragraphs 1 through 67 above as if restated fully herein.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

COUNT II

74. By way of answer to the allegations contained in Paragraph 74, the Diocese incorporates by reference Paragraphs 1 through 73 above as if restated fully herein.

75. Denied.

76. The Diocese admits only that BEHS is an operation, ministry, and mission of the Diocese. All remaining allegations contained in Paragraph 76 are denied.

77. The Diocese and BEHS strive to provide its students with an excellent education and to support concepts of Catholic teaching on morality and respect for all individuals. All remaining allegations contained in Paragraph 77 are denied.

78. The Diocese and BEHS strive to provide its students with an excellent education and to support concepts of Catholic teaching on morality and respect for all individuals. All remaining allegations contained in Paragraph 78 are denied.

79. Denied as pleaded.

80. The Diocese admits only that it relied on professionals to design appropriate facilities and safety features in the BEHS building and the structure was built to those specifications. All remaining allegations contained in Paragraph 80 are denied.

81. Denied.

82. Denied.

COUNT III

TUITION CLASS UNJUST ENRICHMENT AGAINST THE DEFENDANTS

83. By way of answer to the allegations contained in Paragraph 83, the Diocese incorporates by reference Paragraphs 1 through 82 above as if restated fully herein.

84. The Diocese admits only that BEHS charges tuition for the educational services it provides to students. The Diocese and BEHS strive to provide its students with an excellent education and to support concepts of Catholic teaching on morality and respect for all individuals. All remaining allegations contained in Paragraph 84 are denied.

85. The Diocese admits only that students would be monitored for safety reasons. All remaining allegations contained in Paragraph 85 are denied.

86. Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied.

COUNT IV

TUITION CLASS BREACH OF WARRANTY AGAINST THE DEFENDANTS

92. By way of answer to the allegations contained in Paragraph 92, the Diocese incorporates by reference Paragraphs 1 through 91 above as if restated fully herein.

93. By way of answer to the allegations contained in Paragraph 93, the Diocese admits that Scofield was employed at BEHS in some capacity for some period of time. At some point Scofield engaged in criminal misconduct outside the scope of that employment. All remaining allegations contained in Paragraph 93 are denied.

94. By way of answer to the allegations contained in Paragraph 94, the Diocese admits that Scofield was employed at BEHS in some capacity for some period of time. At some point Scofield engaged in criminal misconduct outside the scope of that employment. All remaining allegations contained in Paragraph 94 are denied.

95. Denied.

96. The Diocese admits only that BEHS charges tuition for the educational services it provides to students. All remaining allegations contained in Paragraph 96 are denied.

97. Denied.

98. Denied.

99. Denied.

100. Admitted on information and belief.

101. The Diocese admits only that students changed clothes in the locker rooms. All remaining allegations contained in Paragraph 101 are denied.

102. The Diocese admits only that students changed clothes in the locker rooms. All remaining allegations contained in Paragraph 102 are denied.

103. Denied.

COUNT V

TUITION CLASS AND VIEWED CLASS NEGLIGENT HIRING, SUPERVISION AND RETENTION AGAINST THE DEFENDANTS

104. By way of answer to the allegations contained in Paragraph 104, the Diocese incorporates by reference Paragraphs 1 through 103 above as if restated fully herein.

105. By way of answer to the allegations contained in Paragraph 105, the Diocese admits that Scofield was employed at BEHS in some capacity for some period of time. At some point Scofield engaged in criminal misconduct outside the scope of that employment. All remaining allegations contained in Paragraph 105 are denied.

106. By way of answer to the allegations contained in Paragraph 106, the Diocese admits that Scofield was employed at BEHS in some capacity for some period of time. At some point Scofield engaged in criminal misconduct outside the scope of that employment. All remaining allegations contained in Paragraph 106 are denied.

107. Denied.

108. Denied.

109. Denied.

110. Denied.

111. Denied.

COUNT VI

VIEWED CLASS NEGLIGENCE AGAINST ALL DEFENDANTS

112. By way of answer to the allegations contained in Paragraph 112, the Diocese incorporates by reference Paragraphs 1 through 111 above as if restated fully herein.

113. Denied.

114. Denied.

115. Denied.

116. Denied.

117. Denied.

118. Denied.

119. Denied.

120. Denied.

PRAYER FOR RELIEF

Defendants deny the WHEREFORE paragraph together with all subparts and denies that Plaintiffs are entitled to any relief whatsoever.

FOR A SECOND DEFENSE

Plaintiffs have failed to state a cause of action for which relief may be granted.

FOR A THIRD DEFENSE

Plaintiffs' claims are barred by the applicable statute of limitations or statute of repose.

FOR A FOURTH DEFENSE

Plaintiffs' claims are barred by the doctrines of *res judicata*, collateral estoppel, or the settlement of the class action brought on behalf of all victims of sexual abuse by the Diocese in 2007.

FOR A FIFTH DEFENSE

Plaintiffs' claims, or any of them, are barred by the Free Exercise Clause and the Establishment Clause of the First Amendment to the Constitution as incorporated under the Fourteenth Amendment.

FOR A SIXTH DEFENSE

Plaintiffs' claims for punitive damages violate both the Fifth and Fourteenth Amendments of the United States Constitution and Section III of the South Carolina Constitution in that the jury's discretion to award punitive damages in any amount which it chooses is wholly devoid of any meaningful standard and is inconsistent with due process guarantees.

FOR A SEVENTH DEFENSE

Plaintiffs are not entitled to recover punitive damages because the Diocese did not act with malice or reckless indifference to the rights of others.

FOR AN EIGHTH DEFENSE

The Diocese submits that the injuries and damages for which Plaintiff seeks recovery were due to, and proximately caused by, the intervening negligence, recklessness, willfulness, wantonness, criminal acts, and fault of a third party or parties other than the Diocese. Such intervening negligence, recklessness, willfulness, wantonness, criminal acts, and fault are the sole

cause of the injuries and damages for which Plaintiff seeks recovery, and, therefore, Plaintiff may not recover against the Diocese.

FOR A NINTH DEFENSE

The Diocese is not liable for the actions of any agent who acted outside the scope of his/her authority.

FOR A TENTH DEFENSE

Plaintiffs' claims are barred under the doctrines of waiver, estoppel or laches.

FOR AN ELEVENTH DEFENSE

Plaintiffs' claims are barred or limited under South Carolina Charitable Immunity Doctrine or their damages, which are denied, are limited by the statutory caps on liability for charitable entities.

FOR A TWELFTH DEFENSE

To the extent Plaintiffs seek a double recovery for any alleged single wrong, they must elect his remedy.

FOR A THIRTEENTH DEFENSE

The Diocese denies of any conduct on its part was the proximate cause of the Plaintiffs' claimed injuries and damages, which injuries and damages are specifically denied.

FOR A FOURTEENTH DEFENSE

Plaintiffs' warranty claims must fail for lack of any actionable warranty.

FOR A FIFTEENTH DEFENSE

Plaintiffs' contract-based claims must fail based upon the lack of any actionable contract with these Diocese.

FOR A SIXTEENTH DEFENSE

Defendant pleads the recovery limits of S.C. Code Ann. § 15-32-530 and any other limitation on punitive damages allowed by Federal or State law..

FOR A SEVENTEENTH DEFENSE

All allegations not specifically admitted are denied.

FOR A EIGHTEENTH DEFENSE

Any contract-based claims are barred by lack of privity of contract.

FOR A NINETEENTH DEFENSE

Suit against the “Bishop of Charleston, in his official capacity” is improper, and that party is due to be dismissed inasmuch as the Corporation Sole is the civil law presence of the Diocese of Charleston and its Bishop. Further, the Court is precluded from engaging in an unconstitutional scrutiny or inquiry into the manner in which the ecclesiastical office of Bishop determines to interact with the civil law realm as such inquiry is prohibited under the Free Exercise and Establishment clauses of the First Amendment.

FOR A TWENTIETH DEFENSE

Plaintiffs have failed to allege any required elements that would permit the Court to certify a class of plaintiffs under Rule 23, Fed.R.Civ.P.

FOR A TWENTY-FIRST DEFENSE

Plaintiffs’ proposed classes cannot be certified because the claims asserted are not typical; are not common to the class; and the purported class representatives cannot adequately represent the absent class members.

FOR A TWENTY-SECOND DEFENSE

Plaintiffs' proposed classes must fail because of the speculative nature of the allegations would require individual inquiries to determine membership in the class.

FOR A TWENTY-THIRD DEFENSE

Plaintiffs and the class they purport to represent have not been damaged.

FOR A TWENTY-FOURTH DEFENSE

The actions taken by the Diocese were justifiable, reasonable, done in good faith, and were without improper purpose.

FOR A TWENTY-FIFTH DEFENSE

Plaintiffs' claims, and those of the purported classes, are barred for lack of a justiciable controversy.

FOR A TWENTY-SIXTH DEFENSE

Plaintiffs' warranty claims must fail for lack of an actionable warranty.

FOR A TWENTY-SEVENTH DEFENSE

Discovery is just beginning in this case. The Diocese specifically reserves the right to assert additional defenses, including counter claims, cross claims, and third party claims, as may become available or apparent.

RELIEF REQUESTED

WHEREFORE, Defendant prays for the dismissal of the Complaint with prejudice in its entirety for an award of attorney's fees, expenses, and costs and for such other and further relief as may be just and appropriate under the circumstances.

TURNER, PADGET, GRAHAM & LANEY, P.A.

March 4, 2021

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ATTORNEYS FOR DIOCESE DEFENDANTS

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CIVIL ACTION NUMBER: 2:21-cv-613-RMG

Tuition Payer 100,)
Viewed Student Female 200,)
Viewed Student Male 300,)
on behalf of themselves and all others)
Similarly situated,)

Plaintiffs,)

vs.)

**PLAINTIFFS' ANSWERS TO
RULE 26.01 INTERROGATORIES**

The Bishop of Charleston, a Corporation)
Sole, Bishop England High School,)
Tortfeasors 1-10, The Bishop of the Diocese)
of Charleston, in his official capacity, and)
Robert Guglielmone, individually,)

Defendants.)

(A) State the full names, address, and telephone number of all persons or legal entities who may have a subrogation interest in each claim and state the basis and extent of said interest.

Answer: Upon information and belief, Plaintiffs are unaware of any persons or legal entities that have any subrogation interest in any claim asserted by Plaintiffs.

(B) As to each claim, state whether it should be tried jury or nonjury and why.

Answer: Certification of two classes has been sought by Plaintiffs; a "Tuition Class" and a "Viewed Class". The latter seeks compensation for persons who as high school students were made to dress and undress in front of 4' by 4' viewing windows by the defendants. There were other viewers and filmers or photographers who looked at the students and in some instances recorded student images. Damages are sought arising from the aforesaid activities grounded in South Carolina tort law, requiring jury trial.

As to the "Tuition Class", both legal and equitable claims have been lodged, entitling Plaintiffs to a jury trial.

(C) State whether the party submitting these responses is a publicly owned company and separately identify: (1) any parent corporation and any publicly-held corporation owning ten percent (10%) or more of the party's stock; (2) each publicly-owned company of which it is a parent; and (3) each publicly-owned company in which the party owns ten percent (10%) or more of the outstanding shares.

Answer: Plaintiffs are not a publicly owned company, and therefore interrogatory (C) is inapplicable.

(D) State the basis for asserting the claim in the division in which it was filed (or the basis of any challenge to the appropriateness of the division). *See* Local Civil Rule 3.01 (D.S.C).

Answer: Plaintiff originally filed this suit in the State of South Carolina, Court of Common Pleas, Ninth Judicial Circuit, Berkeley County. Thereafter, Defendants sought removal to the United States District Court District of South Carolina, Charleston Division. The Defendants' basis for removal and rationale for jurisdiction is stated in their filings.

(E) Is this action related in whole or in part to any other matter filed in this District, whether civil or criminal? If so, provide: (1) a short caption and the full case number of the related action; (2) and explanation of how the matters are related; and (3) a statement of the status of the related action. Counsel should disclose any cases which *may* be related regardless of whether they are still pending. Whether cases *are* related such that they should be assigned to a single judge will be determined by the Clerk of Court bases on a determination of whether the cases; arise from the same or identical transactions, happenings, or events; involve the identical parties or property, or for any other reason would entail substantial duplication of labor if hear by different judges.

Answer: Yes. Mary Roe 1818 v. The Bishop of Charleston, a Corporation Sole, and The Bishop of the diocese of Charleston, in His Official Capacity, Civil Action Number: 2:21-cv-20-RMG. The matters are related as both cases involve The Bishop of Charleston, a Corporation Sole, and The Bishop of the diocese of Charleston, in His Official Capacity as parties defendant. Additionally, both cases relate to the sexual abuse and/or sexual exploitation of minor children at the hands of the Catholic Church. Finally, both cases are assigned to The Honorable Richard M. Gergel. Mary Roe 1818 v. The Bishop of Charleston, et al was removed to this Court on January 5, 2021. Judge Gergel denied Defendants' Motions to Dismiss by Orders dated March 1, 2021, and March 3, 2021. A Scheduling Order has not yet been entered in Mary Roe 1818 v. The Bishop of Charleston, et al.

Respectfully submitted this 17th of March, 2021.

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

C/A No.: 2:21-cv-00613-RMG

Tuition Payer 100, Viewed Student Female
200, Viewed Student Male 300, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

The Bishop of Charleston, a Corporation Sole,
Bishop England High School, Tortfeasors 1-
10, The Bishop of the Diocese of Charleston,
in his official capacity, and Robert
Guglielmone, individually,

Defendants.

**DEFENDANTS' RULE 26.03
DISCLOSURES**

Defendants, by and through undersigned counsel, make the following disclosures pursuant
to Fed.R.Civ.P. Rule 26.03:

(1) A short statement of the case:

This case involves allegations that students may have been observed changing clothes in the locker rooms at Bishop England High School. The Tuition Payer class representative seeks a refund of all tuition and fees paid for any and all students who attended Bishop England from 1998 to the present because the students may have been observed changing clothes in the locker rooms. The Viewed Student class representatives seek \$300 million in damages for all persons who may have been observed changing clothes in the locker rooms at the school.

(2) The names of fact witnesses likely to be called by the party and a brief summary of their expected testimony.

RESPONSE:

At this point, the Defendants believe the following may be called:

- a) Representatives of Bishop of Charleston, a Corporation Sole. These witnesses are anticipated to testify regarding the civil law presence of the ecclesiastical entity known as the Diocese of Charleston; the lack of juridical presence of the Diocese's ministry, Bishop England High School; the Diocese's knowledge of the design and construction of the school.**
- b) Past and present faculty and staff of Bishop England who may testify regarding school operations and policies.**
- c) Representatives of LS3P who are expected to testify regarding the architectural design of the school and the design features to enhance safety of students.**
- d) Representatives of Gulf Stream Construction Company who are expected to testify regarding the construction of the school.**
- e) Athletic directors and coaches from comparator schools who are expected to testify regarding facilities with similar design features.**
- f) Alumni of Bishop England and parents of alumni who will testify regarding their knowledge (if any) of the matters pleaded in the complaint.**
- g) Health care providers or counselors who have treated members of the putative classes.**

(3) The names and subject matter of expert witnesses (if no witnesses have been identified, the subject matter and field of expertise should be given as to experts likely to be offered);

RESPONSE:

Defendants have not yet determined which retained experts, if any, will testify on their behalf at trial. Defendants will disclose their experts, if any, at the appropriate time pursuant to the Court's operative Scheduling Order. In the meantime, Defendants anticipate the following topics will require expert testimony:

- a) **School design and safety features.**
- b) **Standards for school construction of public and private schools.**
- c) **Psychiatric and/or psychological professionals who will address Plaintiffs' claims of the emotional damages asserted in Plaintiffs' Complaint.**

(4) A summary of the claims or defenses with statutory and/or case citations supporting the same:

Class certification: Plaintiffs must prove their compliance with Rule 23's requirements – numerosity, commonality, typicality, and adequacy of representation with respect to each claim they assert. Rule 23 does not set forth a mere pleading standard. Plaintiffs are not permitted to satisfy their burden with conclusory allegations or “boiler plate memoranda laden with self-serving conclusions.”¹ Plaintiffs must present evidence and affirmatively prove each required element of class certification.² Actual, not presumed, conformance with Rule 23(a) remains indispensable, and the required rigorous analysis will entail some overlap with the merits of the plaintiff's underlying claim.³ Only if Plaintiffs have proven each element of Rule 23(a) may the Court turn to Rule 23(b)(3)'s more onerous requirements that Plaintiffs also prove that common issues predominate over individual issues.⁴

Plaintiff has asserted the following causes of action:

1. **Wrongful intrusion into private affairs:** Wrongful intrusion is a species of invasion of privacy. The South Carolina Supreme Court recognized that the right to privacy is not

¹ *Wheeler v. Anchor Cont'l, Inc.*, 80 F.R.D. 93, 96 (D.S.C. 1978) quoting *Shelton v. Pargo, Inc.*, 582 F.2d 1298, 1312 (4th Cir. 1978).

² *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011); *EQT Prod. Co. v. Adair*, 764 F.3d 347, 357 (4th Cir. 2014).

³ *Id.*

⁴ *See Comcast*, 133 S.Ct. at 1432 and *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 623-624, (1997).

absolute.⁵ The elements of a claim for wrongful intrusion are as follows: (1) An intrusion may consist of watching, spying, prying, besetting, overhearing, or other similar conduct. (2) Into that which is private. The intrusion on the plaintiff must concern those aspects of himself, his home, his family, his personal relationships, and his communications which one normally expects will be free from exposure to the defendant. (3) Substantial and unreasonable enough to be legally cognizable. “The law does not provide a remedy for every annoyance that occurs in everyday life.”⁶ In order to constitute an invasion of privacy, the defendant’s conduct must be of a nature that would cause mental injury to a person of ordinary feelings and intelligence in the same circumstances.⁷ The law protects normal sensibilities, not heightened sensitivity, however genuine.⁸ Whether the conduct in question meets this test is, in the first instance, a question of law for the court.⁹ (4) The defendant’s act or course of conduct must be intentional.¹⁰

2. **Negligence:** Plaintiff is required to prove that (1) the defendant owed a duty of care to each of them individually; (2) the defendant breached that duty by a negligent act or omission; and (3) that plaintiff suffered damage as a proximate result of the negligent act.¹¹

“If any of these elements is absent, a negligence claim is not stated.”¹² The existence of a legal duty of care is a question of law for the Court.¹³ The Supreme Court of South

⁵ *Meetze v. Associated Press*, 230 S.C. 330, 337, 95 S.E.2d 606, 609

⁶ *Kelley v. Post Publishing Company*, 98 N.E.2d 286, 287 (Mass. 1951).

⁷ *Meetze v. Associated Press*, *supra*.

⁸ *Id.*; *Rycroft v. Gaddy*, *supra* (plaintiff must show a blatant and shocking disregard of his rights and serious mental injury or humiliation to himself as a result thereof).

⁹ *Id.*

¹⁰ *Snakenberg v. Hartford Cas. Ins. Co.*, 299 S.C. 164, 171-72, 383 S.E.2d 2, 6 (Ct. App. 1989)

¹¹ *See Carolina Chloride, Inc. v. Richland Cty.*, 394 S.C. 154, 163-164 714 S.E.2d 869, 873 (2011).

¹² *Summers v. Harrison Constr.*, 298 S.C. 451, 455, 381 S.E.2d 493, 495 (Ct. App. 1989).

¹³ *See Johnson v. Robert E. Lee Academy, Inc.*, 401 S.C. 500, 506-507, 737 S.E.2d 512, 515 (Ct. App. 2012).

Carolina and the courts of this State “will not extend the concept of a legal duty of care beyond reasonable limits.”¹⁴ In general, there is no common law duty to act, and foreseeability of injury, standing alone, does not give rise to a duty to act.¹⁵ South Carolina has never recognized a duty of care to prevent acts of a third person without concrete evidence of a specific danger to *specific* persons.¹⁶

3. **Unjust enrichment:** To recover on a claim of unjust enrichment, the plaintiff must show: (1) he conferred a non-gratuitous benefit on the defendant; (2) the defendant realized some value from the benefit; and (3) it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value.¹⁷
4. **Breach of warranty:** The South Carolina Uniform Commercial Code (“UCC”) governs breach of warranty causes of action as well as related remedies. Significantly, Article II of the South Carolina applies to transactions of goods.¹⁸ Under South Carolina law, there are three different types of warranties: express warranty, implied warranty of merchantability, and implied warranty of fitness for a particular purpose.¹⁹

¹⁴ *Colleton Preparatory Academy, Inc. v. Hoover Universal, Inc.*, 379 S.C. 181, 190, 666 S.E.2d 247, 248 (2008) (overruled on other grounds); *Huggins v. Citibank, N.A.*, 355 S.C. 329, 333, 585 S.E.2d 275, 277 (2003).

¹⁵ See *Chakrabati v. City of Orangeburg*, 403 S.C. 308, 314, 743 S.E.2d 109, 112 (Ct. App. 2013) and *Oblachinski v. Reynolds*, 391 S.C. 557, 561, 706 S.E.2d 844, 846 (2011).

¹⁶ *Roe v. Bibby*, 410 S.C. 287, 763 S.E.2d 645 (Ct. App. 2014), *cert. dismissed as improvidently granted*.

¹⁷ *Campbell v. Robinson*, 398 S.C. 12, 24, 726 S.E.2d 221, 228 (Ct.App. 2012); *Niggel Assocs., Inc. v. Polo’s of N. Myrtle Beach, Inc.*, 296 S.C. 530, 532, 374 S.E.2d 507, 509 (Ct.App. 1988).

¹⁸ See *In re Breast Implant Product Liability Litigation*, 331 S.C. 540, 503 S.E.2d 445 (S.C. 1998) (Service providers not liable under U.C.C. provisions pertaining to express warranty, implied warranty of merchantability, and implied warranty of fitness for a particular purpose).

¹⁹ Plaintiff’s Complaint does not specify the type of warranty Defendant BEHS allegedly breached, and as such, out of an abundance of caution, Defendant BEHS has provided an overview of each type recognized under South Carolina law; See S.C. Code § 36-2-313; S.C. Code § 36-2-314; S.C. Code § 36-2-315.

To establish a cause of action for breach of an express warranty, Plaintiff must prove: (1) existence of express warranty; (2) breach of express warranty; and (3) damages proximately caused by breach.²⁰

To recover for a breach of the implied warranty of merchantability under South Carolina law, Plaintiff must prove: (1) a merchant sold goods; (2) the goods were not merchantable at the time of the sale; (3) the plaintiff or his property were injured by such goods; (4) the defect or other condition amounting to a breach of the implied warranty of merchantability proximately caused the injury; and (5) the plaintiff so injured gave timely notice to the seller.²¹

A cause of action for a breach of an implied warranty of fitness for a particular purpose arises when the vendor knows when the contract is formed that the purchaser is relying on the vendor's skill or judgment in furnishing the goods.²²

5. Negligent hiring, supervision, and retention: In order to establish a claim for negligent supervision, a plaintiff must prove that: (1) [the employee] intentionally harms another when he is on the employer's premises, is on premises he is privileged to enter only as employee, or is using the employer's chattel; (2) the employer knows or has reason to know he has the ability to control the employee; and (3) the employer knows or has reason to know of the necessity and opportunity to exercise such control.²³

²⁰ *Thomas v. Louisiana-Pacific Corp.*, 2007, 246 F.R.D. 505 (S.C.D.C. July 5, 2007).

²¹ *Brooks v. GAF Materials Corp.*, 2014, 41 F.Supp.3d 474 (S.C.D.C. July 9, 2014).

²² *Id.*

²³ *Degenhart v. Knights of Columbus*, 309 S.C. 114, 117, 420 S.E.2d 495, 496 (1992) *citing* *Restatement (Second) of Torts § 317*. See also *Doe by Doe v. Greenville Hosp. System*, 323 S.C. 33, 448 S.E.2d 564 (Ct.App. 1994); *Brockington v. Pee Dee Mental Health*, 315 S.C. 214, 433 S.E.2d 16 (Ct.App. 1993); and *Moore by Moore v. Berkeley Cty. S.D.*, 326 S.C. 584, 486 S.E.2d 9 (Ct App. 1997)

Defenses pleaded by Defendants

Defendant's summary:

A. Failure to State a Cause of Action: To survive Rule 12(b)(6) scrutiny, a complaint must include “a short and plain statement of the claim showing that the pleader is entitled to relief,” and the movant must show “beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”²⁴

B. Statute of Limitations or Statute of Repose: Section 15–3–530 of the South Carolina Code (Supp.2003) sets forth a three-year statute of limitations for the actions at law in this matter. Under the discovery rule, the statutory period begins to run from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence.²⁵ Under this objective test, one is charged with discovery when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim might exist.²⁶

C. Res Judicata or Collateral Estoppel: *Res judicata* is also known as claim preclusion, and bars relitigation of claims that were or could have been raised in a prior proceeding between the same parties. Collateral estoppel, or issue preclusion, bars the relitigation of specific issues that were actually determined in a prior action.²⁷

²⁴ *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); accord *Edwards v. City of Goldsboro*, 178 F.3d 231, 242 (4th Cir. 1999) (holding that granting a 12(b)(6) motion is appropriate where “it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief”).

²⁵ *Smith v. Smith*, 291 S.C. 420, 426, 354 S.E.2d 36, 40 (1987).

²⁶ *Austin v. Conway Hosp., Inc.*, 292 S.C. 334, 339, 356 S.E.2d 153, 156 (Ct.App.1987).

²⁷ *Sartin v. Macik*, 535 F.3d 284, 287 (4th Cir. 2008).

D. Claims are Barred by Free Exercise Clause and Establishment Clause:

The Free Exercise Clause prohibits governmental authorities from exerting of any restraint on the free exercise of religion. Its purpose is to secure religious liberty in the individual by prohibiting any invasions there by civil authority. It bars “governmental regulation of religious beliefs as such,” prohibiting misuse of secular governmental programs “to impede the observance of one or all religions or ... to discriminate invidiously between religions ... even though the burden may be characterized as being only indirect.”²⁸ The Establishment Clause of the First Amendment provides: “Congress shall make no law respecting an establishment of religion.” U.S. Const. amend. I. The Supreme Court “has long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause.”²⁹

Indeed, “there is room for play in the joints between” the Free Exercise and Establishment Clauses, such that government can accommodate religion beyond what the Free Exercise Clause mandates, without violating the Establishment Clause.³⁰ In analyzing alleged violations of the Establishment Clause, the Fourth Circuit applies the test first set forth by the Supreme Court in *Lemon v. Kurtzman*.³¹ Under *Lemon*, in order to withstand a challenge under the Establishment Clause a policy must (1) have a secular purpose; (2) have the principal or primary effect of neither advancing nor inhibiting religion; and (3) not foster excessive governmental entanglement with religion.³²

²⁸ See e.g. *Braunfeld v. Brown*, 366 U.S. 599, 607 (1961).

²⁹ *Hobbie v. Unemployment Appeals Comm’n*, 480 U.S. 136, 144-45 (1987).

³⁰ *Locke v. Davey*, 540 U.S. 712, 718-719 (2004) (quoting *Walz v. Tax Comm’n*, 397 U.S. 664, 669 (1970)).

³¹ *Lemon v. Kurtzman*, 403 U.S. 602, (1971). See *Ehlers–Renzi v. Connelly Sch. of the Holy Child, Inc.*, 224 F.3d 283, 288 (4th 2000).

³² *Lemon*, 403 U.S. at 612–13.

E. Award of Punitive Damages violates Fifth and Fourteenth Amendments: Any award of punitive damages against the Diocese would violate the constitutional safeguards provided under the Constitution of the United States of America and the Constitution of the State of South Carolina in that punitive damages violate the due process and equal protection guarantees, place an undue burden on interstate commerce, violate the right to assembly and petition the government, and violate the prescription against excessive fines.³³

F. Punitive Damages Barred Due to Lack of Evidence of Recklessness or Malice: Diocese denies that punitive or exemplary damages are warranted because at no time did the Diocese act wrongfully or with malice or reckless indifference toward Plaintiffs' rights under the law.³⁴

G. Intervening Negligence, Recklessness, Willfulness, Wantonness, Criminal Acts, and Fault of Third Party: The injuries and damages for which Plaintiffs seek recovery were due to, and proximately caused by, the intervening negligence, recklessness, willfulness, wantonness, criminal acts, and fault of a party or parties other than the Diocese. Such intervening negligence, recklessness, willfulness, wantonness, criminal acts, and fault are the sole cause of the injuries and damages for which Plaintiff seeks recovery, and therefore, Plaintiff may not recover against the Diocese.³⁵ The injuries and damages for which Plaintiffs seek recovery were due to, and proximately caused by, the sole negligence, recklessness, willfulness, wantonness, criminal acts, and fault of third parties for whom the Diocese is not liable. Therefore, the acts or fault of

³³ *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996); *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991).

³⁴ *Kolstad v. American Dental Ass'n*, 527 U.S. 526 (1999); *Duncan v. Ford Motor Co.*, 385 S.C. 119, 142, 682 S.E.2d 877, 889 (Ct.App. 2009); *Lowery v. Circuit City Stores, Inc.*, 206 F.3d 431 (4th Cir. 2000).

³⁵ *Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 677 S.E.2d 612 (Ct.App. 2009); *Rife v. Hitachi Const. Machinery Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct.App. 2005); *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 502 S.E.2d 78 (1998); *Young v. Tide Craft, Inc.*, 270 S.C. 453, 242 S.E.2d 671 (1978).

third parties are the real, efficient, direct, and proximate cause of the injuries for which Plaintiffs seek recovery, and therefore, Plaintiffs cannot recover against the Diocese.³⁶

H. Defendants are Not Liable for Agent Who Acted Outside Scope of Their Authority: A principal cannot be held liable in damages for the tort of his agent unless the agent was acting within the actual scope of his agency.³⁷

I. Waiver, Estoppel, and Laches: Under South Carolina law, “[a] waiver is a voluntary and intentional abandonment or relinquishment of a known right.”³⁸ “Generally, the party claiming waiver must show that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all material facts upon which they depended.”³⁹ Equitable estoppel is “the inhibition to assert such right by reason of mischief following one’s own fault and may arise even though there was no intention on the part of the party estopped to relinquish or change any existing right. Prejudice to the other party is an essential element of equitable estoppel.”⁴⁰ As with waiver, laches arises upon the failure to assert a known right under circumstances indicating that the lached party has abandoned or surrendered the right.”⁴¹

J. South Carolina Charitable Immunity/Limitation of Liability for Charitable Organizations is governed South Carolina Code Ann. § 33-56-180(A).

³⁶ *O’Neal v. Carolina Farm Supply of Johnston, Inc.*, 279 S.C. 490, 309 S.E.2d 776 (Ct.App. 1983); *Funderburke v. Johnson*, 253 S.C. 430, 171 S.E.2d 597 (1969).

³⁷ *Goble v. American R. Express Co.*, 124 S.C. 19, 115 S.E. 900 (1923); *See also Doe by Doe v. Greenville Hosp. System*, 448 S.E.2d 564 (Ct.App. 1994); *Brockington v. Pee Dee Mental Health*, 433 S.E.2d 16 (Ct.App. 1993); *Moore by Moore v. Berkeley Cty. S.D.*, 486 S.E.2d 9 (Ct.App. 1997) and *Anderson v. U.S.*, 2016 U.S.Dist. LEXIS 9225, 2016 WL 320076 (D.S.C. 2016)(Cain, DJ.).

³⁸ *Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 415 S.E.2d 384, 387-88 (1992).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Provident Life & Accident Ins. Co. v. Driver*, 317 S.C. 471, 479, 451 S.E.2d 924, 929 (Ct.App.1994).

K. Double Recovery: Plaintiffs' causes of action seek relief based on the same alleged underlying injury and, although the Diocese specifically denies that Plaintiffs are entitled to any recovery whatsoever, should Plaintiffs succeed on more than one ground for relief, Plaintiffs must elect their remedy so as to prevent a double recovery for a single purported wrong.⁴²

L. Proximate Cause: "Negligence is not actionable unless it is a proximate cause of the injuries, and it may be deemed a proximate cause only when without such negligence the injury would not have occurred or could have been avoided."⁴³ Proximate cause is the efficient or direct cause; the thing that brings about the complained of injuries.⁴⁴ "Proximate cause requires proof of (1) causation in fact and (2) legal cause."⁴⁵

(5) Absent special instructions from the assigned judge, the parties shall propose dates for the following deadlines listed in Local Civil Rule 16.02:

RESPONSE:

Defendants have submitted a proposed scheduling order related to class issues.

(6) The parties shall inform the Court whether there are any special circumstances which would affect the time frames applied in preparing the scheduling order.

RESPONSE:

The case involves class allegations. As such, the scheduling order should be modified to confine discovery to issues of class certification first, so that the Court can determine certification as soon as practicable.

⁴² *Cowart v. Poore*, 337 S.C. 359, 523 S.E.2d 807 (1981).

⁴³ *Hanselmann v. McCardle*, 275 S.C. 46, 48–49, 275 S.E.2d 531, 533 (1980) (quoting *Hughes v. Children's Clinic, P.A.*, 269 S.C. 389, 398, 237 S.E.2d 753, 757 (1977)).

⁴⁴ *Platt*, 379 S.C. 249, 266, 665 S.E.2d 631, 640 (Ct.App. 2008).

⁴⁵ *Bramlette v. Charter-Medical-Columbia*, 302 S.C. 68, 72, 393 S.E.2d 914, 916 (1990).

Defendants are not aware of any authority supporting a departure from Rule 17, Fed.R.Civ.P. with respect to the identities of any adult plaintiff under the facts alleged.

(7) The parties shall provide any additional information requested in the Pre-Scheduling Order or otherwise requested by the assigned judge.

RESPONSE:

None at this time.

TURNER, PADGET, GRAHAM & LANEY, P.A.

June 7, 2021

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ATTORNEYS FOR DIOCESE DEFENDANTS

**United States District Court
District of South Carolina
Charleston Division**

Gary Nestler,
Viewed Student Female 200,
Viewed Student Male 300,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

The Bishop of Charleston, a Corporation
Sole, Bishop England High School,
Tortfeasors 1-10, The Bishop of the Diocese
of Charleston, in his official capacity, and
Robert Guglielmone, individually,

Defendants.

C/A: 2-21-cv-00613-RMG

**AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT**

Plaintiffs, by and through their undersigned counsel, bring this action in their individual capacities and on behalf of the class of persons defined below against Defendants The Bishop of Charleston, a Corporation Sole, (“Diocese”), Bishop England High School (“BEHS”), Tortfeasors 1-10 whose identity is unknown/not sufficiently known, nor formally or specifically known because of the dishonest, deceptive, deceitful conduct of Defendants herein and/or others, but whose identity and specific acts Plaintiffs will seek to learn in discovery in this case, and who may be added as additional parties Defendant, and Robert Guglielmone, individually, in addition to his official role as Bishop, head, of the Diocese of Charleston, who has sought to alter

truth and/or impede and/or avoid and cover up Defendants' actions related to sexual and/or other abuse of children, and who acted improperly, illegally, and conspiratorially to the detriment of Plaintiffs herein and for the benefit of Defendants herein, all improperly and impermissibly so (collectively "Defendants"). This action is based upon Plaintiffs' personal knowledge, except as to any allegations on information and belief, and as to any such, Plaintiffs believe them to be true.

I. OVERVIEW OF THIS ACTION

1. This class action lawsuit arises from egregious acts of BEHS by and through its employees, agents and/or servants and by the Diocese which governs the same and its Bishop. For at least two decades (since 1998) BEHS students were made and required to disrobe partially or fully, exposing themselves in locker rooms controlled by Defendants BEHS and the Diocese. Each of the locker rooms (boys and girls) were subject to viewing through a large glass window, positioned at desktop height as shown on **Exhibit 1**, while students were using the dressing room/locker room/shower room/toilet room facilities at Bishop England High School. At some times the referenced students were completely clothed. At times the students were partially or completely nude.

2. Defendants acted together with, in the name of, for their mutual benefit, on behalf of, by, through, for, and in conjunction with, each other.

3. BEHS students are and were during the relevant time period required to take physical education classes and to use the referenced dressing rooms for purposes of changing clothes and/or putting on various forms of equipment and cleaning themselves.

4. The confirmed exposure of BEHS students became public knowledge in May of 2019 when an employee of BEHS was found to have made video recordings of BEHS students

who were either partially or entirely unclothed while using the described facilities. That individual was arrested, criminally charged with voyeurism, subsequently entered a plea of guilty in the Berkeley County Court of General Sessions, and was sentenced. A copy of the Indictments and Sentencing Sheet are attached hereto as **Exhibit 2**.

5. Until this matter became public as described above, the parents, guardians, and/or tuition payers for the viewed students were not aware of the existence of the viewing windows referenced herein nor that they were being utilized by BEHS employees and agents or others to view BEHS students. At this same time period the subject students, Plaintiffs/the VIEWED CLASS, learned, understood, realized, came to know the use of the windows, and that those, almost entirely minor students had been objectified, their privacy invaded and compromised, and they were sickened, betrayed, embarrassed, fearful, and sad; they still are today and will continue to suffer. Named Plaintiffs and all class members, in both classes, have damages far in excess of the South Carolina required minimum amount. All students in the VIEWED CLASS were trained, taught, and accepted that they were subject to the rules and conditions established and imposed by Defendants.

6. Defendants have long held themselves out to be leading, moral, religious, and educational authorities, even after expressly stating publicly the kind and manner of education it would provide for the students for whom the subject tuition was paid. Defendants promised to provide this kind of education which had previously been so broadly described, and failed to do so but it kept the tuition money paid by TUITION CLASS and kept hiding their deplorable conduct from the class. Defendants boasted that BEHS provided a safe, moral, respectful, environment based on the teachings of the Catholic Church. Such was represented to Plaintiffs herein by Defendants.

7. Defendants never revealed to the TUITION CLASS that children, students, were subject to viewing and were actually viewed during their use of the dressing rooms/locker room facilities; and that the very purpose of the subject windows was to facilitate viewing of persons using the locker room dressing room facilities, whether such persons were naked or fully clothed.

8. Dressing rooms/locker rooms are reasonably expected to be private, safe, personal spaces, just as are the bathroom facilities in the school. At all times since its opening on Daniel Island in 1998, BEHS has required male and female students, almost entirely minor children, and any others using such school facilities, to disrobe in view of the large plate glass windows which are in the shared walls of the dressing rooms/locker room and the offices of the BEHS athletic department and/or other school personnel.

9. All users of the BEHS dressing rooms /locker room were subject to viewing by any persons who were in the viewing rooms or in any position to look through the clear glass window, for example when the door to the office space or viewing room was open or when entering the viewing area for some legitimate purpose.

10. The viewing windows were each almost exactly four feet by four feet in size and, as stated previously, the bottom of each window was at desktop height.

11. Access to the viewing room was also available to persons making deliveries, visiting, cleaning, and/or replacing or servicing equipment therein as wells as those referenced in paragraph 9 above.

12. All Defendants knew or should have known of the danger and the propensity of persons to view students changing clothes in the dressing/locker room.

13. Defendants knew or should have known that many persons associated with Catholic schools and churches had viewed and abused minor children, and that the Diocese has been ridden with priests who were sexual predators of children.

14. The many misdeeds of a sexual nature perpetrated by the clergy or other agents of the Diocese of Charleston, BEHS, and/or Bishop Robert Guglielmone in his official capacity and/or personal capacities, are well known to and have been many times admitted by Defendants. Because of this history, it should have been reasonably foreseeable that BEHS and all Defendants should have been sensitive to not creating an environment where such abuse and objectification would be able to develop, thrive, and prosper.

15. Similar sentiments have been expressed by at least one Diocese official. Principal Finneran has made at least two writings so stating, attached hereto as **Exhibits 3 and 4**.

16. Defendants had the authority to never have installed the windows or even make them, so that viewing students in the dressing/locker room was not even possible. Instead, the windows were covered with blinds that could be and were controlled and/or manipulated from within the viewing rooms; of course, without warning or knowledge to students or tuition payers.

17. The unlawful and improper acts heretofore and hereafter referenced were committed and done without the knowledge or consent of the tuition payers or of the victims of such viewings, as is illustrated by indictments and guilty plea to the criminal charge brought against the BEHS employee referenced above. Further, the children victims did not and could not consent to such acts, criminal acts. After the window and viewing information became public, Defendants covered them with plywood within a matter of hours, this after being in place and used to view nude and/or partially nude children for more than twenty years.

18. In addition, the persons who agreed to and paid tuition to BEHS for a certain class, quality, level of education, personal development, safety, and protection for each respective student, and the VIEWED CLASS students themselves, were never aware of such viewing facilities until the matter became publicly known.

19. Plaintiffs/class representatives bring this action on behalf of themselves and all persons paying tuition and/or fees or costs to BEHS for the purpose of obtaining for the respective student for whom such tuition was paid, the quality and kind of safe environment and education which Defendants BEHS and the Diocese publicly proclaimed would be afforded to the minor students who were all victims of the illicit activity heretofore referenced, and the same for all VIEWED CLASS Plaintiffs and members.

20. Defendants failed and/or refused to take steps to protect the students from an obvious and foreseeable danger for more than twenty years.

21. The relevant time period is the entire existence of the Daniel Island campus of BEHS during which time thousands of students, mostly children, were actual victims of voyeurism, invasion of privacy, objectification, shame, and other harms, or were susceptible, and at least hundreds, if not thousands, of tuition payers received what was not represented to them by Defendants: an unsafe environment for the child students. By this action the TUITION CLASS seeks damages of approximately One Hundred Fifty Million and 00/100 Dollars (\$150,000,000.00) together with costs and attorneys fees, and with such additional relief and items of recovery as may be permissible for a class of tuition payers as referenced.

22. Also sought is a class of those subjected to exposing their bodies, fully or partially unclothed, to various persons for viewing. By this action the VIEWED CLASS seeks damages of \$150,000,000.00 together with costs and attorneys fees.

II. JURISDICTION AND PARTIES

23. The Diocese is a corporation sole and the governance and organization of the Catholic Church throughout the entire state of South Carolina. It does business in all counties of the state and the Bishop of the Diocese of Charleston is the ultimate authority for diocesan matters everywhere in the state.

24. The Diocese has been sued many times in the state courts of South Carolina including in Charleston, Berkeley, and Dorchester counties, and has routinely been found subject to the jurisdiction of the presiding Court of Common Pleas.

25. The Diocese has also brought suit in the state of South Carolina and alleged it is subject to jurisdiction of the presiding Court of Common Pleas.

26. BEHS is a private school whose principal place of business is located in Berkeley County, South Carolina, at 363 Seven Farms Drive, Charleston, South Carolina 29492.

27. BEHS and the Diocese of Charleston utilize aliases when transacting their business. It is difficult for someone wronged by the Diocese of Charleston, and/or its agents, or BEHS, and/or its agents, to know what name, for subterfuge or otherwise, each of these Defendants is operating under at a given point in time. For example, attached hereto as **Exhibit 5**, is *Bishop England High School v. George Hudson and Eun-Hee Hudson, Civil Action Number 2011-CP-10-5391*, whereby BEHS, in that name, is suing to collect claimed due tuition payments. Also **Exhibit 6** is an Affidavit of John Barker, whereby he, an official of the Diocese, swears under oath that BEHS is not a separate entity and states that BEHS “does not exist as a separate juridic person apart from the Diocese. Therefore, its assets are entirely owned by the Diocese, and its civil law presence in the Corporation Sole.” There are numerous other such examples in the permanent public records found in the counties of Charleston, Berkeley, and

other counties in the state. See **Exhibit 7**, excerpts from the July 17, 2019 Transcript of Record in *John Doe v. The Bishop of Charleston, a Corporation Sole, et al, Civil Action Number 2018-CP-10-03929* and *Richard Roe v. The Bishop of Charleston, a Corporation Sole, et al, Civil Action Number 2018-CP-10-04206* where counsel for the Defendants stated the Bishop of Charleston “has no presence in civil law” and copies of other pleading excerpts showing the Diocese Defendants being sued and suing in that name with the lawyer addressing the court and disavowing the very existence of a party being the same lawyer who represented the “non existing party” suing for money damages as a Plaintiff.

28. BEHS is not incorporated.

29. BEHS is not a partnership.

30. BEHS is an unincorporated association.

31. BEHS is an education facility operated by the Diocese and under the full and final authority of the Diocese of Charleston through its Bishop. In addition, the Diocese has a superintendent of education, whose office and activities are directed out of the diocesan offices in Charleston, South Carolina.

32. Plaintiff Gary Nestler (hereinafter “Tuition Payer” or “Nestler”) is a resident of the state of South Carolina, County of Charleston, who has paid tuition for another person for a certain promised education in a certain promised form, substance, manner, and style, which was not delivered as promised by BEHS and/or the Diocese of Charleston and Plaintiffs Viewed Student Female 200 and Viewed Student Male 300 are residents of the state of South Carolina, County of Charleston, who are victims of the illegal and illicit practices of Defendants herein described and have been proximately damaged as a result.

33. Over the time that BEHS has been located in its current physical campus, including buildings and grounds, a student body of approximately seven hundred students has been maintained annually.

34. On information and belief, the current BEHS campus was constructed in the late 1990's and opened for student occupancy in August or September of 1998.

35. To Plaintiffs' knowledge Vicars General and/or other officials of the Diocese did nothing to prevent students from being viewed by school authorities and others while the students were partly or fully nude in the locker room and perhaps otherwise, or to see that Defendants provided the things promised to tuition payers.

36. To Plaintiffs' knowledge Patrick Finneran, now BEHS principal, did nothing to prevent students from being viewed by school authorities and others while the students were partly or fully nude in the locker room and perhaps otherwise, or to see that Defendants provided the things promised to tuition payers.

37. To Plaintiffs' knowledge Paul Runey, coach and Athletic Director of BEHS, did nothing to prevent students from being viewed by school authorities and others while the students were partly or fully nude in the locker room and perhaps otherwise, or to see that Defendants provided the things promised to tuition payers.

38. Robert Guglielmone, individually, in addition to his official role as Bishop, head, of the Diocese of Charleston, did nothing to prevent students from being viewed by school authorities and others while the students were partly or fully nude in the locker room and perhaps otherwise, and allowed the windows, the viewing, and the non disclosure of same to remain in place for approximately ten years of his term as Bishop. At the time of discovery of the events here condemned, the Bishop had held his position for some nine or ten years, and approved

and/or allowed the viewing of the young students under his authority, control, and care partially or completely nude for that entire time.

39. Tortfeasors 1-10 are not fully known to Plaintiffs at this time. Upon fuller discovery of their identities and acts Plaintiffs reserve the right to add them to this litigation.

40. This Court has jurisdiction over the parties hereto and the subject matter hereof, and venue is proper.

FACTUAL SUMMARY OF KNOWN VOYERISM

41. Upon information and belief, Jeffrey Alan Scofield is a graduate of BEHS who was later hired to serve as the school's Director of Sports Information. Scofield at all times was an actual and/or apparent agent, servant, and/or employee of the Defendants.

A. SCOFIELD USES HIS OFFICE AS A "WINDOW" FOR SEXUAL EXPLOITATION OF YOUNG STUDENTS

42. The locker rooms are used by male and female BEHS students and athletes who use the locker room in connection with athletic activities.

43. Scofield's office at BEHS was one of three athletic offices that had a vantage or viewing point into the school's dressing rooms / locker rooms. The current campus of BEHS was constructed approximately twenty years ago and windows were intentionally designed and installed in three athletic offices to view into the various boys and girls dressing/locker rooms. Scofield's office in particular contained a window looking directly into the corridor of lockers and dressing area of each locker room.

44. Plaintiffs, students at BEHS, routinely used the locker rooms for showering, changing clothes, and using the toilets and urinals during the course of their academic and athletic programs. Due to placement of windows in the athletic offices overlooking the corridor of lockers and dressing areas, including the window in Scofield's office, the children regularly engaged in

private activities, including, but not limited to, changing clothes, disrobing, using the bathroom, and showering and drying in view of others including adult coaches, officials, staff, and unknown persons.

B. SCOFIELD’S ILLICIT VOYEURISM AND SURVEILLANCE COMES TO LIGHT

45. Upon information and belief, at some time on or about to May 1, 2019, the Defendants learned that Scofield had surreptitiously filmed students while they used a BEHS locker room, through the window viewing the locker room, and had stored recordings on an electronic device believed to be a computer belonging to BEHS.

46. Breaking from their normal practice, some Defendant reported the above to law enforcement authorities. A perpetrator, an agent of the Diocese, was arrested by the City of Charleston Police Department (“CPD”) on voyeurism related charges on the same day.

47. On or around May 1, 2019, the parents of some victims were notified that their child/children had been recorded by Scofield, without consent or knowledge, in the locker room while partially and/or fully nude.

48. News accounts indicate that images were taken by Scofield in February 2019 through one of the referenced viewing windows or otherwise peering into the locker room for the illicit purpose of surreptitiously observing, recording, and storing video, audio, and still images of victims while they undressed and/or were partly or fully nude.

49. Upon information and belief, Scofield’s illicit acts were motivated by: (i) his sexual orientation and/or experimentation (according to Scofield’s arrest affidavit, the reason Scofield made and retained the victim videos was because they “piqued his interest”); (ii) his social media involvement with sites such as “Grindr” (advertised as “the world’s largest social networking app for gay, bi, trans and queer people”); and (iii) his fondness for young boys (according to Scofield’s

arrest affidavit, Scofield admitted to police he “liked younger guys” and thought it was “hot” that his victims were 15 years old).

50. Upon further information and belief, Scofield used equipment owned and/or controlled, albeit improperly so, by the Defendants to capture, upload, and/or store the videos, audio-recordings, and/or photographs depicting victim(s) naked or partially clothed.

51. On further information and belief, CPD, SLED, the Special Victims Unit, Internet Crimes Against Children Task Force, the South Carolina Attorney General’s Office and others are or have been conducting investigations into Defendants’ and/or the recorder’s activities.

52. The Defendants were at all relevant times familiar with the activity of nude or partially nude photo making by agents of the Diocese having previously dealt with such sexual abuse acts, and many others, by priests working at churches and/or teaching school in the Diocese.

C. INVASION OF PRIVACY OF BEHS STUDENTS

53. For approximately twenty years, juvenile students, athletes, guests and others using BEHS’s locker rooms have been viewed partially clothed, disrobing, showering, drying off, and fully nude by adult coaches, athletic officials, other agents, employees, and/or servants of the Defendants, and possibly others, due to the deliberate design of the athletic offices and locker rooms at BEHS, which were created for that very purpose.

54. Scofield was only one such agent, employee, and/or servant of the Defendants, who had routine opportunity to observe BEHS students engaged in locker room activities (dressing/undressing, bathing/showering, using the facilities). Scofield had served as BEHS’s Director of Sports Information for approximately five years, and, upon information and belief, during the same period Scofield had access to the window locations from which he watched, recorded, and/or took sexual pleasure from watching and recording students engaging in routine,

innocent, and what Plaintiffs believed to be protected and private locker room activities. As detailed herein, it is known (at least to some degree) how Scofield used his position, office, and view of the young students that undressed in his plain view; that is, as access to a steady, replenishing stream of unassuming and trusting victims, child students, who Scofield used to gain sexual pleasure and pornographic material for Scofield's personal use and potential and/or actual distribution and exposure to others.

55. It is not yet fully known who, to what extent, or over what span of time he and others who had similar access to victims, used the opportunity for perverse personal pleasure; however, the fact that adult coaches, athletic officials, and other agents, employees, and/or servants of the Defendants and even strangers had routine, unfettered view of students in a locker room is intolerable and an invasion of privacy; and this arrangement has been in place for some twenty (20) years with the full knowledge, approval, utilization and control of Defendants.

56. Upon information and belief, BEHS administrators, by and through the Diocese of Charleston and the Bishop, have terminated the known voyeur and obstructed the view of the locker rooms from the subject athletic offices by quickly placing plywood over the office windows as a measure to prevent further viewing. If this type of fix can be implemented in just a day or two it is absolutely mind boggling and completely intolerable that Defendants let this activity go unchecked for twenty years because it proves Defendants' ability to easily control the subject premises and the safety of the children they were entrusted with. Furthermore, it proves there was no compelling need for the viewing windows in the first place, ownership, control and the right to control being with Defendants, and capable of easy and inexpensive modification in short order without any threat to the integrity of the building itself.

**CLASS ALLEGATIONS AGAINST BISHOP ENGLAND, THE DIOCESE OF
CHARLESTON, AND THE BISHOP**

A. MAINTAINABILITY OF CLASS ACTION

57. Plaintiffs adopt by reference all allegations contained in the paragraphs above as if fully set forth herein and seek the formation of two classes, approval of class representatives and class counsel for each class as front end matters.

58. The TUITION CLASS consists of all persons who paid tuition for BEHS student(s) – male and female – who at any time from the opening of the school year in 1998 through May 10, 2019 have been subjected to the use of BEHS’s dressing rooms /locker rooms to undress and/or dress, shower, or for any other activity that would cause the student to be partially or fully nude, exposed to the viewing windows., Defendants’ representatives or others, for photographing, recording, viewing, or otherwise intruded upon, subjected to, and exposed to people, employees of any Defendant, coaches, athletic officials or other agents, employees, servants, and invitees or permittees of the Defendants, or other persons; such students not being provided the safe, moral, respectful and private the manner Defendants represented they would be. The Class is maintainable under Rule 23(a) of the South Carolina Rules of Civil Procedure for the reasons set forth previously herein and that follow. Tuition Plaintiff is representative of the Class. Hereinafter this class may be referred to as the “TUITION CLASS.”

59. Also, Plaintiffs seek a second class made up of students who during the relevant time period as set forth above were required by Defendants to robe and/or disrobe in the view of third parties. This class will be referred to as the VIEWED CLASS.

60. The precise identities of the members of the Classes will be readily ascertainable through the records of Defendants.

61. The VIEWED CLASS seeks damages for injuries to the members proximately and directly resulting from Defendants’ wrongful conduct.

62. The number of members of each Class is likely to well exceed 100 persons, perhaps several hundred or even a thousand or more individuals, and, therefore, are so numerous that joinder of all members is impracticable; the BEHS average student population being some seven hundred persons over each of the years since 1998.

63. The questions of law and fact in this action are common to the respective Classes and predominate over any question affecting only individual Class members. They include, among others, questions as to:

- a. Tuition payment and the basis for same.
- b. Whether the Defendants are directly liable to the Class members for negligently designing, constructing, and maintaining and supervising or failing to supervise, the athletic offices and locker rooms at BEHS in a manner which exposed the using minors to be viewable partially or fully nude;
- c. Whether the Class members had a reasonable expectation of privacy in the dressing rooms / locker rooms;
- d. Whether Defendants' employees, coaches, athletic officials, or other agents, employees, and/or servants, invitees or permittees of the Defendants' observation, viewing, watching, or objectification of the students was an intrusion or invasion of privacy or other improper action by Defendants or any of them;
- e. Whether the students undressing, dressing, disrobing, and other similar locker room acts is a private matter;
- f. Whether Class members were or should have been warned that the students may be viewed by third parties, including officials/agents, invitees, permittees, and others, while such class members were naked or less than fully clothed;
- g. Whether the Class members may reasonably expect the students undressing, dressing, disrobing, and other similar locker room acts would be free from exposure to adults, such as Scofield and/or any other persons, including the making available of images of Plaintiffs to other persons;
- h. Whether Defendants' type of conduct was of a nature that would create an unsafe environment that could cause mental and/or physical injury to a person of ordinary sensibilities and intelligence in the same or similar circumstances as the students as a matter of law, and ultimately, as a matter of fact,

and be detrimental to the environment represented by the Defendants;

i. Whether the viewing activities of agents, employees, servants of the Defendants, observation, viewing, or watching of the students was intentional by Defendants, was done willingly, and the result of such conduct was desired by the actor(s) and/or the actors knew or ought to have known that injurious results would flow from their conduct; and

j. Whether Scofield or the other coaches, athletic officials or other agents, employees, and/or servants, invitees and/or permittees and/or others subject to the Diocese Defendants' control or right to control, observation, viewing, or watching of the students was enabled by their employment by the Defendants or the placing of the windows and requiring student use of dressing/locker room facilities for their intended and usual purpose.

k. Whether it is proper for Defendants herein to require students to disrobe in an area viewable by others.

64. Plaintiffs' claims are typical of the claims of the Class members, and the defenses relied upon by Defendants are typical of the defenses likely to be asserted to the claims asserted by members of each respective class.

65. Plaintiffs share legal interests identical to those of the Class members, therefore, Plaintiffs will fairly and adequately represent and protect the interests of the Classes and are fully able to do so.

66. Counsel bringing this action are fully able to conduct these claims and this litigation.

67. The amount in controversy with respect to each member of each of the two classes exceeds one hundred dollars.

COUNT I

VIEWED CLASS WRONGFUL INTRUSION INTO PRIVATE AFFAIRS AGAINST THE DEFENDANTS

68. Plaintiffs adopt by reference all allegations contained in the paragraphs above as if fully set forth herein. The allegations which follow apply as to each class.

69. The VIEWED CLASS has a reasonable expectation of privacy when disrobing in the Dressing Rooms / Locker Rooms at BEHS.

70. Adult coaches, athletic officials, and other agents, employees, and/or servants of the Defendants and even strangers had routine, unfettered view of students in a locker room constituted an intrusion into the dignity and privacy of the VIEWED CLASS. In particular, the children regularly engaged in private activities, including, but not limited to, changing clothes, disrobing, using the bathroom, and showering and drying in view of such persons.

71. The intrusion into the VIEWED CLASS' privacy was substantial and unreasonable such that it would cause mental injury to a person of ordinary feelings and intelligence in the same circumstances. Without limitation, there was- and is- no justification for the Defendants to have viewed naked children.

72. The intrusion into the VIEWED CLASS' privacy was also intentional, as the windows were intentionally designed and installed in three athletic offices to view into the various boys and girls dressing/locker rooms for the specific purpose of intruding upon the VIEWED CLASS' seclusion and dignity. Moreover, the Defendants knew or should have known that , knew many persons associated with Catholic schools and churches had viewed and abused minor children, creating an environment where such abuse and objectification would be able to develop, thrive, and prosper.

73. The Defendants' wrongful intrusion upon the private affairs of the VIEWED CLASS as alleged herein, establishes as a matter of law, the fact of damages to be determined by the trier of fact such trier of fact able to consider their invaded privacy and dignity to which the VIEWED CLASS seeks damages of approximately One Hundred Fifty Million and 00/100 Dollars (\$150,000,000.00) together with costs and attorney's fees, and with such additional relief and

items of recovery as may be permissible for a class of tuition payers as referenced.

COUNT II

TUITION CLASS DIRECT NEGLIGENCE AGAINST THE DEFENDANTS

74. Plaintiffs adopt by reference all allegations contained in the paragraphs above as if fully set forth herein. The allegations which follow apply as to each class.

75. Plaintiffs assert these claims against Defendants BEHS, the Diocese of Charleston, and/or the Bishop personally and in his official capacity, individually and on behalf of the TUITION CLASS.

76. At all relevant times, Defendants owned, supervised, directed, operated and controlled BEHS or claimed the right to do so; although at various times when it suited their interests some or all Defendants have claimed BEHS was a separate entity from the Diocese of Charleston.

77. At all relevant times, Defendants owed a special and continuing duty of care to maintain the safety and privacy of their students and athletes and other users of the facilities of the school, and to provide a moral, safe, and respectful environment for all students.

78. At all relevant times, Defendants made assertions directly and indirectly to the TUITION CLASS that they would maintain the safety and privacy and morality of their students and athletes and other users of the facilities of the school and would treat students in a respectful and proper way.

79. At all relevant times, Defendants owed a duty of care to those paying the tuition of students to maintain the safety and privacy and moral atmosphere of their students and athletes and other users of the facilities of the school.

80. At all relevant times, Defendants appointed, engaged, employed, and/or contracted with architects, engineers, general contractors, builders, lawyers, insurers, and other professionals to design, build, update, upgrade, up-fit, remodel, revise, and maintain the premises, including the athletic offices and locker rooms.

81. Defendants breached their duties to the TUITION CLASS members by designing, constructing, and maintaining the BEHS locker rooms and athletic offices in a way that adult athletic officials or their other agents, employees, and/or servants and others would have unfettered, open, and intrusive view of the students while they engaged in private activities such as dressing, undressing, being nude, disrobing, showering and drying, and an opportunity for actors and perpetrators to derive sexual pleasure from such observation and recorded material. They further breached their duties to the TUITION CLASS s by failing to update, upgrade, up-fit, remodel, modify, and/or revise the configuration of the boys' and girls' locker rooms at any point over the past twenty plus years prior to May 1, 2019, in a way that would remove, obstruct, or otherwise block the subject windows and protect the students.

82. As a direct, proximate, immediate, and foreseeable result of BEHS, the Diocese of Charleston, and/or the Bishop's conduct, the TUITION CLASS has suffered permanent economic damages and members of the TUITION CLASS all have been proximately damaged by Defendants' conduct and seek damages of approximately One Hundred Fifty Million and 00/100 Dollars (\$150,000,000.00) together with costs and attorneys fees, and with such additional relief and items of recovery as may be permissible for a class of tuition payers as referenced.

COUNT III

TUITION CLASS UNJUST ENRICHMENT AGAINST THE DEFENDANTS

83. Plaintiffs adopt by reference all allegations contained in the paragraphs above as if

fully set forth herein.

84. Defendants were paid tuition in exchange for providing students an excellent educational experience and a safe, trusting, moral, caring, and respectful environment.

85. Defendants knew or should have known, and intended, that students could and would be viewed from the viewing rooms.

86. Defendants failed to take adequate steps to prevent students from being viewed from the viewing areas.

87. Defendants failed to fulfill their duty to provide a safe environment.

88. Defendants were unjustly enriched through the payments of tuition for a safe environment that was not provided.

89. Defendants' unjust enrichment flows from the conduct described in this Complaint.

90. Under common law principles the Defendants should not be permitted to retain the benefits conferred (tuition paid).

91. Plaintiffs seek disgorgement of all tuition payments and establishment of a constructive trust from which the TUITION CLASS may obtain restitution of approximately One Hundred Fifty Million and 00/100 Dollars (\$150,000,000.00) together with costs and attorneys fees, and with such additional relief and items of recovery as may be permissible for a class of tuition payers as referenced

COUNT IV

TUITION CLASS BREACH OF WARRANTY AGAINST THE DEFENDANTS

92. Plaintiffs adopt by reference all allegations contained in the paragraphs above as if fully set forth herein.

93. At all relevant times, the Defendants appointed, engaged, employed, and/or contracted with Scofield to act as their actual and/or apparent, duly authorized agent, servant, and/or employee and permitted Scofield to remain as such for many years.

94. At all relevant times, the Defendants granted access to BEHS to Scofield, including, but not limited to, viewing rooms and placed him in a position of trust and authority over the students.

95. Students were to be provided an excellent educational experience and safe, trusting, moral, caring, and respectful environment, but were not.

96. In consideration for these representations, the TUITION CLASS paid tuition and various fees.

97. By viewing students, using photography, video, and/or audio recording equipment in or near the changing room, as well as by actually recording students, and/or by failing to prevent the same, the Defendants breached the above warranties and/or caused breaches of the above warranties made by Defendants.

98. Each Defendant is liable individually, by virtue of warranties they themselves made. Furthermore, each Defendant is liable for each other's warranties.

99. The Defendants are furthermore liable by virtue of the fact that they are each responsible for the others' conduct and that of their employees, agents, representatives, permittees and those within the course and scope of their agency.

100. All BEHS students were required to take physical education classes.

101. All students were required to use the subject locker rooms.

102. All students were required to dress and undress in front of plate glass windows in the view of various BEHS faculty and staff members and others. The preserved recordings of student images on an instrument or instruments enabled others to view them.

103. As a direct, foreseeable, and proximate result of Defendants' conduct, the TUITION CLASS has been proximately and directly harmed and damaged by Defendants in the amount of approximately One Hundred Fifty Million and 00/100 Dollars (\$150,000,000.00) together with costs and attorneys fees, and with such additional relief and items of recovery as may be permissible for a class of tuition payers as referenced.

COUNT V

TUITION CLASS AND VIEWED CLASS NEGELENT HIRING, SUPERVISION AND RETENTION AGAINST THE DEFENDANTS

104. Plaintiffs adopt by reference all allegations contained in the paragraphs above as if fully set forth herein.

105. At all relevant times, the Defendants appointed, engaged, employed and/or contracted with Scofield and others to act as their actual and/or apparent, duly authorized agent, servant, and/or employee and permitted him to remain as such for all of the employment periods.

106. At all relevant times, the Defendants granted privileges to Scofield and others to practice as an administrator, athletic director, coach, teacher, spiritual advisor, role model, and/or counselor and, thereby, render educational, athletic, spiritual, and personal services and guidance to their students, other youth, congregants, and/or community members.

107. At all relevant times, the Defendants acted by and through Scofield and others – their agents, employees, and/or servants – acting within the scope and course of his agency and/or employment.

108. At all relevant times, the Defendants owed a continuing duty to: reasonably, carefully, conscientiously secure the services of qualified and well-trained agents, servants, and/or employees; to properly investigate, credential, qualify, select, monitor, and supervise their agents, servants, and/or employees; to promulgate and enforce proper and effective standards, procedures, protocols, systems, and rules to ensure quality care, safety, and privacy of the students; and to otherwise assure and maintain the safety and privacy of the students.

109. The Defendants negligently breached the above-mentioned duties by hiring, retaining, failing to properly train, and failing to properly supervise Scofield and others, despite any reputation for improper, unlawful, inappropriate, lewd, and unprofessional conduct.

110. The Defendants knew or should have known that Scofield engaged in improper, unlawful, inappropriate, lewd, illegal, and unprofessional conduct, including, but not limited to, photographing and/or videotaping students while naked and without consent or authorization and taking perverse pleasure in observing students innocently taking part in locker room acts, or otherwise viewing them.

111. As a direct and proximate result of the Defendants' negligent hiring, training, retention, and supervision of Scofield and others, the TUITION CLASS and the VIEWED CLASS have suffered permanent damages and pecuniary losses to be established at trial.

COUNT VI
VIEWED CLASS NEGLIGENCE AGAINST ALL DEFENDANTS

112. Plaintiffs adopt by reference all allegations contained in the paragraphs above as if

fully set forth herein.

113. Defendants are vicariously liable for all of their actions related to the matters addressed in this lawsuit.

114. Plaintiffs further assert this claim against Defendants in all of their various capacities.

115. At all relevant times, Defendants directed, allowed, and/or encouraged adult athletic officials or others, including all their agents, employees, and/or servants, to observe, watch, monitor, spy, or otherwise view the VIEWED CLASS members in the subject locker rooms (male and female).

116. Dressing rooms /Locker rooms are areas objectively and subjectively private, secure, and intimate places, and the VIEWED CLASS reasonably expected that they would have privacy in the subject locker rooms because, among other reasons, the male and female students and athletes, guests and others routinely undress, dress, shower, dry, and change clothes in these areas, which involves the participants being less than fully clothed and naked at times.

117. Defendants and their agents or employees and adult athletic officials or other agents, employees, and/or servants of the Defendants who had access to the athletic offices with windows into the locker rooms invaded the privacy of the students by observing, watching, spying, or otherwise viewing them in the process of undressing, being nude, disrobing, and/or showering as well as performing acts of personal hygiene. This conduct is and would be highly offensive to any ordinary, reasonably prudent person.

118. Defendants' employees, agents, and others invaded the privacy of students by doing these things, and by viewing, photographing, videotaping, recording, and/or otherwise sexually exploiting the VIEWED CLASS while they were in the locker room for school and/or athletic

and/or other proper activities without victims' knowledge or consent.

119. As a direct and proximate result of the Defendants' negligent hiring, training, retention, and supervision of agents and/or employees, the VIEWED CLASS has suffered damages and pecuniary losses to be established at trial.

120. As the principals, masters, religious leaders, and/or employers of agents and various employees/servants and the other adult athletic officials or other agents, employees, and/or servants and/or others who had access to the athletic offices with windows or view corridors and invaded the students' privacy, the Defendants are liable for all the injuries and damages proximately and directly suffered by the VIEWED CLASS caused by the acts committed by Scofield and others, and seeks damages of approximately One Hundred Fifty Million and 00/100 Dollars (\$150,000,000.00) together with costs and attorneys fees, and with such additional relief and items of recovery as may be permissible for a class of tuition payers as referenced.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

- a. That the court determine that the claims alleged herein be maintained as Class actions under Rule 23 of the South Carolina Rules of Civil Procedure.
- b. That Plaintiffs and Class members be awarded damages for each class (TUITION and VIEWED), including disgorgement of ill gotten gains tuition related, and personal injury or tort damages against Defendants to members of the VIEWED CLASS against Defendants in an amount to be proven at trial;
- c. Establishment of the classes sought, all as to the TUITION CLASS and the VIEWED CLASS.
- d. Appointment of Plaintiffs as class representatives as sought, all as to the TUITION

CLASS and VIEWED CLASS.

e. Approval of class counsel as sought, all as to the TUITION CLASS and VIEWED CLASS.

f. Awarding Plaintiffs and the Class members actual damages in an amount to be proven at trial;

g. Awarding Plaintiffs and the Class members punitive damages in an amount to be proven at trial;

h. Awarding Plaintiffs and the Class members such other relief as may be appropriate; and

i. Granting Plaintiffs and the Class members prejudgment interest, costs, and reasonable attorneys' fees.

JURY TRIAL DEMAND

Plaintiffs demand that this case be tried by a jury on all counts.

Respectfully submitted,

THE RICHTER FIRM, LLC

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Attorneys for Plaintiffs

August 13, 2021
Mount Pleasant, South Carolina

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Gary Nestler, Viewed Student Female 200,
Viewed Student Male 300, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

The Bishop of Charleston, a Corporation Sole,
Bishop England High School, Tortfeasors 1-
10, The Bishop of the Diocese of Charleston,
in his official capacity, and Robert
Guglielmone, individually,

Defendants.

C/A: 2-21-cv-00613-RMG

**ANSWER OF DEFENDANTS TO
AMENDED COMPLAINT**

Now come Defendants, the Bishop of Charleston, a Corporation Sole, Bishop England High School, the Bishop of the Diocese of Charleston, in his official capacity, and Most. Rev. Robert Guglielmone, (collectively referred to as “the Diocese” unless the context indicates otherwise) who answer Plaintiffs’ Amended Complaint as follows:

The Defendants deny the unnumbered preamble of the Amended Complaint.

FOR A FIRST DEFENSE

I. OVERVIEW OF THIS ACTION

1. The Diocese admits only that Bishop England was designed with the safety of students and visitors in mind and that the locker room windows were a safety feature to allow adults to monitor the changing areas for bullying, fighting, or other misbehavior. The Diocese relied on the advice of professionals regarding the design and construction of Bishop England High School. The design complied with the relevant standard of care and comported with safeguarding

the safety of those using the locker rooms. All remaining allegations contained in Paragraph 1 are denied.

2. Denied.

3. Admitted upon information and belief.

4. Defendants admit only that, in May, 2019, the Diocese reported Jeffrey Scofield to City of Charleston Police. Scofield was arrested immediately and terminated from his employment. All remaining allegations contained in Paragraph 4 are denied.

5. The Diocese is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 5 and, on that basis, denies same.

6. The Diocese admits only that it is a leading moral and religious institution that has, as one of its primary missions, evangelization through education of young people. The Diocese and BEHS strive to provide a safe, moral, and nurturing educational environment based on the teachings of the Catholic Church. All remaining allegations contained in Paragraph 6 are denied.

7. Denied.

8. The Diocese admits only that Bishop England was designed with the safety of students and visitors in mind and that the locker room windows were a safety feature to allow adults to monitor the changing areas for bullying, fighting, or other misbehavior. The Diocese also admits that students are required to take physical education classes and that student athletes regularly change in the locker rooms. All remaining allegations in Paragraph 8 are denied.

9. The Diocese admits only that there is a small window in the doors of the coaches' offices, which could allow someone to look in the office. All remaining allegations contained in Paragraph 9 are denied.

10. Admitted upon information and belief.

11. The Diocese admits only that there is a small window in the doors of the coaches' offices, which could allow someone to look in the office. All remaining allegations contained in Paragraph 11 are denied.

12. Denied.

13. Denied as pleaded.

14. Denied.

15. By way of answer to the allegations contained in Paragraph 15, the Diocese admits only that the documents attached to the Complaint as Exhibits 3 and 4 say what they say. Any further allegation contained in Paragraph 15 is denied.

16. By way of answer to the allegations contained in Paragraph 16, the Diocese relied on the advice of professionals regarding the design and construction of Bishop England High School. The design complied with the relevant standard of care and comported with safeguarding the safety of those using the locker rooms. The Diocese admits that blinds were installed in the coaches' offices. All remaining allegations contained in Paragraph 16 are denied.

17. The Diocese is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 17 and, on that basis, denies same.

18. The Diocese is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 18 and, on that basis, denies same.

19. By way of answer to Paragraph 19, the Diocese denies that class treatment is appropriate in any respect. All remaining allegations are denied.

20. Denied.

21. Denied.

22. Denied.

II. JURISDICTION

23. The Diocese admits only that the civil law presence of the ecclesiastical body of the Roman Catholic Church in the State of South Carolina is though Bishop of Charleston, a Corporation Sole. The authority of the person holding the office of Bishop is established under the Catholic Church's Code of Canon Law. All remaining allegations contained in Paragraph 23 are denied.

24. Bishop of Charleston, a Corporation Sole, and Bishop Guglielmone admit the allegations contained in Paragraph 24. The remaining Defendants are without sufficient knowledge or information to form a belief as to the allegations and, on that basis, deny same.

25. Bishop of Charleston, a Corporation Sole, and Bishop Guglielmone admit the allegations contained in Paragraph 25. The remaining Defendants are without sufficient knowledge or information to form a belief as to the allegations and, on that basis, deny same.

26. Bishop England High School is an operation, ministry, and mission of Bishop of Charleston, a Corporation Sole. The school is located in Berkeley County.

27. Bishop England High School is an operation, ministry, and mission of Bishop of Charleston, a Corporation Sole. The Diocese admits the accuracy of Exhibits 5, 6, and 7 to the Complaint. All remaining allegations contained in Paragraph 27 are denied.

28. The Diocese admits only that BEHS is a Diocesan high school and ministry of the Roman Catholic Diocese of Charleston whose formal presence in civil law is Bishop of Charleston, a Corporation Sole. All remaining allegations contained in Paragraph 28 are denied.

29. The Diocese admits only that BEHS is a Diocesan high school and ministry of the Roman Catholic Diocese of Charleston whose formal presence in civil law is Bishop of Charleston, a Corporation Sole. All remaining allegations contained in Paragraph 29 are denied.

30. The Diocese admits only that BEHS is a Diocesan high school and ministry of the Roman Catholic Diocese of Charleston whose formal presence in civil law is Bishop of Charleston, a Corporation Sole. All remaining allegations contained in Paragraph 30 are denied.

31. The Diocese admits only that BEHS is a Diocesan high school and ministry of the Roman Catholic Diocese of Charleston whose formal presence in civil law is Bishop of Charleston, a Corporation Sole. The Diocese has offices in Charleston County and has a superintendent of education whose offices are in Charleston County. All remaining allegations contained in Paragraph 31 are denied.

32. The Diocese is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 32 and, on that basis, denies same.

33. Admitted upon information and belief.

34. Admitted.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. Admitted. The Diocese further asserts that jurisdiction and venue are proper in the District of South Carolina, Charleston Division.

FACTUAL SUMMARY OF KNOWN VOYEURISM

41. Admitted upon information and belief.

42. Admitted.

43. The Diocese admits only that Scofield used one of the coaches' offices that had a window overlooking the boys' locker room. The Diocese relied on professionals to design appropriate facilities and safety features in the building and the structure was built to those specifications. All remaining allegations contained in Paragraph 43 are denied.

44. The Diocese admits only that students used the locker rooms at BEHS. The toilet and shower areas are not visible from the coaches' offices. All remaining allegations contained in Paragraph 44 are denied.

45. Admitted.

46. The Diocese admits only that it complied with South Carolina law and reported Scofield to appropriate authorities, after which he was arrested and charged. All remaining allegations contained in Paragraph 46 are denied.

47. The Diocese admits only that the parents of the boys whom Scofield taped were notified of the incident. All remaining allegations contained in Paragraph 47 are denied.

48. The Diocese admits that the news media covered the incident. All remaining allegations in Paragraph 48 are denied.

49. The Diocese is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 49 and, on that basis, denies same.

50. The Diocese admits that Scofield took photographs using his personal iPhone and that those images were synced to an iPad owned by the school. All remaining allegations contained in Paragraph 50 are denied.

51. By way of answer to the allegations in Paragraph 51, the Diocese admits that law enforcement investigated Scofield for his criminal activity. All remaining allegations are denied.

52. Denied.

53. The Diocese admits only that it relied on professionals to design appropriate facilities and safety features in the BEHS building and the structure was built to those specifications. All remaining allegations contained in Paragraph 53 are denied.

54. By way of answer to the allegations contained in Paragraph 54, the Diocese admits that Scofield was employed at BEHS in some capacity for some period of time. At some point Scofield engaged in criminal misconduct outside the scope of that employment. All remaining allegations contained in Paragraph 54 are denied.

55. The Diocese admits only that it relied on professionals to design appropriate facilities and safety features in the BEHS building and the structure was built to those specifications. All remaining allegations contained in Paragraph 55 are denied.

56. The Diocese admits that Scofield was terminated immediately and that the subject windows were covered. All remaining allegations contained in Paragraph 56 are denied.

**CLASS ALLEGATIONS AGAINST BISHOP ENGLAND, THE DIOCESE OF
CHARLESTON, AND THE BISHOP**

57. By way of answer to the allegations contained in Paragraph 57, the Diocese incorporates by reference Paragraphs 1 through 56 above as if restated fully herein.

58. The Diocese denies that class treatment is appropriate in this case. All allegations contained in Paragraph 58 are denied.

59. The Diocese denies that class treatment is appropriate in this case. All allegations contained in Paragraph 59 are denied.

60. Denied.

61. Denied.

62. Denied.

63. The Diocese denies the allegations contained in Paragraph 63 together with all subparts thereto.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

COUNT I

VIEWED CLASS WRONGFUL INTRUSION INTO PRIVATE AFFAIRS AGAINST THE DEFENDANTS

68. By way of answer to the allegations contained in Paragraph 68, the Diocese incorporates by reference Paragraphs 1 through 67 above as if restated fully herein.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

COUNT II

TUITION CLASS DIRECT NEGLIGENCE AGAINST THE DEFENDANTS

74. By way of answer to the allegations contained in Paragraph 74, the Diocese incorporates by reference Paragraphs 1 through 73 above as if restated fully herein.

75. Denied.

76. The Diocese admits only that BEHS is an operation, ministry, and mission of the Diocese. All remaining allegations contained in Paragraph 76 are denied.

77. The Diocese and BEHS strive to provide its students with an excellent education and to support concepts of Catholic teaching on morality and respect for all individuals. All remaining allegations contained in Paragraph 77 are denied.

78. The Diocese and BEHS strive to provide its students with an excellent education and to support concepts of Catholic teaching on morality and respect for all individuals. All remaining allegations contained in Paragraph 78 are denied.

79. Denied as pleaded.

80. The Diocese admits only that it relied on professionals to design appropriate facilities and safety features in the BEHS building and the structure was built to those specifications. All remaining allegations contained in Paragraph 80 are denied.

81. Denied.

82. Denied.

COUNT III

TUITION CLASS UNJUST ENRICHMENT AGAINST THE DEFENDANTS

83. By way of answer to the allegations contained in Paragraph 83, the Diocese incorporates by reference Paragraphs 1 through 82 above as if restated fully herein.

84. The Diocese admits only that BEHS charges tuition for the educational services it provides to students. The Diocese and BEHS strive to provide its students with an excellent education and to support concepts of Catholic teaching on morality and respect for all individuals. All remaining allegations contained in Paragraph 84 are denied.

85. The Diocese admits only that students would be monitored for safety reasons. All remaining allegations contained in Paragraph 85 are denied.

86. Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied.

COUNT IV

TUITION CLASS BREACH OF WARRANTY AGAINST THE DEFENDANTS

92. By way of answer to the allegations contained in Paragraph 92, the Diocese incorporates by reference Paragraphs 1 through 91 above as if restated fully herein.

93. By way of answer to the allegations contained in Paragraph 93, the Diocese admits that Scofield was employed at BEHS in some capacity for some period of time. At some point Scofield engaged in criminal misconduct outside the scope of that employment. All remaining allegations contained in Paragraph 93 are denied.

94. By way of answer to the allegations contained in Paragraph 94, the Diocese admits that Scofield was employed at BEHS in some capacity for some period of time. At some point Scofield engaged in criminal misconduct outside the scope of that employment. All remaining allegations contained in Paragraph 94 are denied.

95. Denied.

96. The Diocese admits only that BEHS charges tuition for the educational services it provides to students. All remaining allegations contained in Paragraph 96 are denied.

97. Denied.

98. Denied.

99. Denied.

100. Admitted on information and belief.

101. The Diocese admits only that students changed clothes in the locker rooms. All remaining allegations contained in Paragraph 101 are denied.

102. The Diocese admits only that students changed clothes in the locker rooms. All remaining allegations contained in Paragraph 102 are denied.

103. Denied.

COUNT V

TUITION CLASS AND VIEWED CLASS NEGLIGENT HIRING, SUPERVISION AND RETENTION AGAINST THE DEFENDANTS

104. By way of answer to the allegations contained in Paragraph 104, the Diocese incorporates by reference Paragraphs 1 through 103 above as if restated fully herein.

105. By way of answer to the allegations contained in Paragraph 105, the Diocese admits that Scofield was employed at BEHS in some capacity for some period of time. At some point Scofield engaged in criminal misconduct outside the scope of that employment. All remaining allegations contained in Paragraph 105 are denied.

106. By way of answer to the allegations contained in Paragraph 106, the Diocese admits that Scofield was employed at BEHS in some capacity for some period of time. At some point Scofield engaged in criminal misconduct outside the scope of that employment. All remaining allegations contained in Paragraph 106 are denied.

107. Denied.

108. Denied.

109. Denied.

110. Denied.

111. Denied.

COUNT VI

VIEWED CLASS NEGLIGENCE AGAINST ALL DEFENDANTS

112. By way of answer to the allegations contained in Paragraph 112, the Diocese incorporates by reference Paragraphs 1 through 111 above as if restated fully herein.

113. Denied.

114. Denied.

115. Denied.

116. Denied.

117. Denied.

118. Denied.

119. Denied.

120. Denied.

PRAYER FOR RELIEF

Defendants deny the WHEREFORE paragraph together with all subparts and denies that Plaintiffs are entitled to any relief whatsoever.

FOR A SECOND DEFENSE

Plaintiffs have failed to state a cause of action for which relief may be granted.

FOR A THIRD DEFENSE

Plaintiffs' claims are barred by the applicable statute of limitations or statute of repose.

FOR A FOURTH DEFENSE

Plaintiffs' claims are barred by the doctrines of *res judicata*, collateral estoppel, or the settlement of the class action brought on behalf of all victims of sexual abuse by the Diocese in 2007.

FOR A FIFTH DEFENSE

Plaintiffs' claims, or any of them, are barred by the Free Exercise Clause and the Establishment Clause of the First Amendment to the Constitution as incorporated under the Fourteenth Amendment.

FOR A SIXTH DEFENSE

Plaintiffs' claims for punitive damages violate both the Fifth and Fourteenth Amendments of the United States Constitution and Section III of the South Carolina Constitution in that the jury's discretion to award punitive damages in any amount which it chooses is wholly devoid of any meaningful standard and is inconsistent with due process guarantees.

FOR A SEVENTH DEFENSE

Plaintiffs are not entitled to recover punitive damages because the Diocese did not act with malice or reckless indifference to the rights of others.

FOR AN EIGHTH DEFENSE

The Diocese submits that the injuries and damages for which Plaintiff seeks recovery were due to, and proximately caused by, the intervening negligence, recklessness, willfulness, wantonness, criminal acts, and fault of a third party or parties other than the Diocese. Such intervening negligence, recklessness, willfulness, wantonness, criminal acts, and fault are the sole

cause of the injuries and damages for which Plaintiff seeks recovery, and, therefore, Plaintiff may not recover against the Diocese.

FOR A NINTH DEFENSE

The Diocese is not liable for the actions of any agent who acted outside the scope of his/her authority.

FOR A TENTH DEFENSE

Plaintiffs' claims are barred under the doctrines of waiver, estoppel or laches.

FOR AN ELEVENTH DEFENSE

Plaintiffs' claims are barred or limited under South Carolina Charitable Immunity Doctrine or their damages, which are denied, are limited by the statutory caps on liability for charitable entities.

FOR A TWELFTH DEFENSE

To the extent Plaintiffs seek a double recovery for any alleged single wrong, they must elect their remedy.

FOR A THIRTEENTH DEFENSE

The Diocese denies of any conduct on its part was the proximate cause of the Plaintiffs' claimed injuries and damages, which injuries and damages are specifically denied.

FOR A FOURTEENTH DEFENSE

Plaintiffs' warranty claims must fail for lack of any actionable warranty.

FOR A FIFTEENTH DEFENSE

Plaintiffs' contract-based claims must fail based upon the lack of any actionable contract with these Diocese.

FOR A SIXTEENTH DEFENSE

Defendant pleads the recovery limits of S.C. Code Ann. § 15-32-530 and any other limitation on punitive damages allowed by Federal or State law.

FOR A SEVENTEENTH DEFENSE

All allegations not specifically admitted are denied.

FOR A EIGHTEENTH DEFENSE

Any contract-based claims are barred by lack of privity of contract.

FOR A NINETEENTH DEFENSE

Suit against the “Bishop of Charleston, in his official capacity” is improper, and that party is due to be dismissed inasmuch as the Corporation Sole is the civil law presence of the Diocese of Charleston and its Bishop. Further, the Court is precluded from engaging in an unconstitutional scrutiny or inquiry into the manner in which the ecclesiastical office of Bishop determines to interact with the civil law realm as such inquiry is prohibited under the Free Exercise and Establishment clauses of the First Amendment.

FOR A TWENTIETH DEFENSE

Plaintiffs have failed to allege any required elements that would permit the Court to certify a class of plaintiffs under Rule 23, Fed.R.Civ.P.

FOR A TWENTY-FIRST DEFENSE

Plaintiffs’ proposed classes cannot be certified because the claims asserted are not typical; are not common to the class; and the purported class representatives cannot adequately represent the absent class members.

FOR A TWENTY-SECOND DEFENSE

Plaintiffs' proposed classes must fail because of the speculative nature of the allegations would require individual inquiries to determine membership in the class.

FOR A TWENTY-THIRD DEFENSE

Plaintiffs and the class they purport to represent have not been damaged.

FOR A TWENTY-FOURTH DEFENSE

The actions taken by the Diocese were justifiable, reasonable, done in good faith, and were without improper purpose.

FOR A TWENTY-FIFTH DEFENSE

Plaintiffs' claims, and those of the purported classes, are barred for lack of a justiciable controversy.

FOR A TWENTY-SIXTH DEFENSE

Plaintiffs' warranty claims must fail for lack of an actionable warranty.

FOR A TWENTY-SEVENTH DEFENSE

Discovery is just beginning in this case. The Diocese specifically reserves the right to assert additional defenses, including counter claims, cross claims, and third party claims, as may become available or apparent.

RELIEF REQUESTED

WHEREFORE, Defendant prays for the dismissal of the Complaint with prejudice in its entirety for an award of attorney's fees, expenses, and costs and for such other and further relief as may be just and appropriate under the circumstances.

Respectfully submitted,

TURNER, PADGET, GRAHAM & LANEY, P.A.

August 26, 2021

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ATTORNEYS FOR DIOCESE DEFENDANTS

**United States District Court
District of South Carolina
Charleston Division**

Gary Nestler,
Viewed Student Female 200,
Viewed Student Male 300,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

VS.

The Bishop of Charleston, a Corporation)
Sole, Bishop England High School,)
Tortfeasors 1-10, The Bishop of the Diocese)
of Charleston, in his official capacity, and)
Robert Guglielmone, individually,)

Defendants.

C/A: 2-21-cv-00613-RMG

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Come now Plaintiffs by and through their undersigned attorneys, and file this their Motion for Class Certification, and state the following in support thereof:

I. Factual Background.

As the Court is aware, the Plaintiffs filed this lawsuit seeking class action status on behalf of current and past Bishop England High School (hereinafter, “BEHS”) students who were made and required to disrobe, partially or fully, in each of three dressing room / locker rooms, thereby exposing themselves in the locker rooms controlled by Defendants Bishop England High School, The Bishop of Charleston, a Corporation Sole, The Bishop of Charleston, in his official capacity, Robert Guglielmone, individually, and Tortfeasors 1-10. Each of the locker rooms (boys and girls) were subject to viewing through a large 4’ by 4’ plate glass window, positioned at desktop height, while students were using the dressing room / locker room facilities at BEHS since the opening of the school building on Daniel Island in the City of Charleston (approximately September 1, 1998)

until May of 2019. The windows were covered with blinds that could be and were controlled and/or manipulated from within the viewing rooms; of course, without warning or knowledge to students or tuition payers. (Amended Complaint, ¶ 16). Plaintiffs herein allege that the BEHS students, children, using the locker rooms had a reasonable expectation of privacy in the locker rooms, were unaware that they were being viewed, and that there was no legitimate purpose for use of the windows (Amended Complaint, ¶¶ 5, 16, 17, 18, 55, 68-73, 115-120, Dkt. #35). After the window and viewing information became public as a result of a Defendant employee voyeur, Jeffrey Scofield, Defendants covered the windows with plywood within a matter of hours, this after being in place and surreptitiously used to view nude and/or partially nude children for more than twenty years. (Amended Complaint, ¶ 17). At some point, the temporary plywood coverings were removed and the viewing portals were permanently bricked in with cement blocks and painted to match the existing walls. (Dep. Mary Tucker, P. 30, L. 18 -P. 31, L. 19, **Exhibit #1**). The Plaintiffs have made the following claims against the Defendants.

- Viewed Class: Wrongful Intrusion into Private Affairs, Negligence, Negligent Hiring Supervision and Retention.
- Tuition Class: Negligence, Unjust Enrichment, Breach of Warranty, Negligent Hiring Supervision and Retention.

The school's use of the viewing windows to monitor students in the locker rooms invaded their privacy. The use of the viewing windows was common to all students that attended Bishop England High School since 1998 when the school was constructed. All students had to use the locker rooms. All students had a reasonable expectation of privacy in the locker rooms. The students' privacy was violated through the use of the windows. There were no safety concerns at Bishop England- ever- to warrant the installation of the windows or their use. Further, as learned

through discovery, there were never any incidents of safety captured through the monitoring of the children, from the time of installation of the windows through the removal. Even if the windows were justified at the time of the installation- which is denied- the decades long “monitoring” of naked children, under the guise of “safety” is disgusting and reprehensible, and is outrageous. The Plaintiffs’ Complaint, Paragraph 63, incorporated by reference here, alleged questions of law and fact in this action that are common to the respective Classes and predominate over any question affecting only individual Class members.

II. Consideration of Merits in Relation to Rule 23: All Students at Bishop England had their Privacy Violated by Defendants Implementation and Use of the Viewing Portals: A Violation in Common to all Bishop England Students Until the Windows were Removed.

While the likelihood of the plaintiffs' success on the merits is not a relevant consideration, [citation omitted] the Court is not limited to the pleadings. Rather, it must “take a close look at the facts relevant to the certification question and, if necessary, make specific findings on the propriety of certification.” (quotations omitted). In taking this close look, it is appropriate for the Court to “consider the merits of the case to the degree necessary to determine whether the requirements of Rule 23 will be satisfied.” In re Sci.-Atlanta, Inc. Sec. Litig., 571 F. Supp. 2d 1315, 1324 (N.D. Ga. 2007).

A. The Defendants Use of the Viewing Portals Was Without Any Justification and Was an Invasion of the Class Members’ Reasonable Expectation of Privacy in a Locker Room Setting.

LS3P, the architect and the designer of the school, testified that the configuration of the coaches’ offices and the windows at BEHS made it such that the students may not be aware that they were being viewed, and that if they were viewed, it would be an invasion of their privacy:

Q. And do you understand that a student can be mislead [sic] to think that "I am safe from uninvited viewing, that my privacy is not going to be invaded 'cause it

looks like the blinds are closed, and my nudity is not going to be exposed to persons who want to look at me"? Do you understand that or not?

A. **It's possible, yes, sir.**

(Dep. R. Attansio, Vol. II, Rule 30(b)(6) LS3P, P. 155, L. 7-15, **Exhibit #2**).

* * *

Q. And the children in those locker rooms have their privacy invaded if someone looks at them nude. Do you agree with that?

A. **Yes.**

Q. And in the bathroom -- Bishop England also has bathrooms, and those children in the bathrooms have their privacy invaded if someone looked at them in the bathroom.

Q. Do you agree with that or not?

A. **Yes, sir.**

(Dep. R. Attansio, Vol. II, Rule 30(b)(6) LS3P, P. 287, L. 6-21, **Exhibit #2**).

The architect acknowledged that the blinds on the viewing windows operated as a peephole into the locker rooms:

Q. From what I hear you saying, that [sic] Bishop England High School, the blinds are controllable. They can be opened. They can be closed. They can be cracked. They can be broadly opened. Am I understanding you correctly?

A. I think blinds have the ability to vary the position, that is correct.

Q. Now, that's like a peephole, isn't it?

A. I don't know that I would say it's like a peephole. **I guess one could make that argument, yes, sir.**

(Dep. R. Attansio, Vol. II, Rule 30(b)(6) LS3P, P. 163, L. 8-21, **Exhibit #2**).

In this litigation, the principal of the school, Mr. Patrick Finneran, likewise acknowledged that the student users of the locker rooms at BEHS should have a reasonable expectation of privacy.

(Dep. of P. Finneran, P. 37, L. 16- P. 38, L. 6, **Exhibit #3**)

The Principal conceded that if students were not aware that they were being viewed, it would be a violation of their privacy:

Q. If they were viewed and did not know they were being looked at, they didn't realize the windows were open in a manner that they could be viewed but they were viewed, would that be a violation of their privacy?

A. **Yes. Yes.**

(Dep. of P. Finneran, P. 40, L. 15-21, **Exhibit #3**)

The Principal also testified that the if the students were viewed without their knowledge by school staff, it would not be a safe, nor moral or nurturing environment.(Dep of P. Finneran, P. 64, L. 12-P. 65, L. 4, **Exhibit #3**).Dr. Salas, the Plaintiffs' expert psychiatrist addressed the school's environment this way:

Q. Okay. You saying in your report that the viewing windows in the dressing rooms are a breach of privacy. What do you base that opinion on?

A. Well, my experience is, is that we teach children that your body is private and we clothe them and send them out robed in some form or fashion. And there comes a time in a child's life, usually around four or five, where they become aware of everyone's wearing clothes and so they wear clothes. They're not as likely to run out in their diaper or naked on the porch or something. So that's private. And when you have somebody who is now in a situation where these are the facilities that you're expected to use and this is what we have available for your use and we're gonna have a window and the expectation is you're gonna undress in front of that window, to me, that's a violation of privacy.

(Dep. A. Salas, P. 69, L. 11 – P. 70, L. 5, **Exhibit #4**)

The architect testified that the design of the windows allowed students in the locker rooms to have a false sense of privacy, and, that the use of the windows in this matter is an invasion of their privacy. “[e]ven in locker rooms, students retain “a significant privacy interest in their unclothed bodies. Brannum v. Overton Cty. Sch. Bd., 516 F.3d 489, 496 (6th Cir. 2008). In Brannum, the Sixth Circuit Court of Appeals held:

Given the universal understanding among middle school age children in this country that a school locker room is a place of heightened privacy, we believe placing cameras in such a way so as to view the children dressing and undressing in a locker room is incongruent to any demonstrated necessity, and wholly disproportionate to the claimed policy goal of assuring increased school security, especially when there is no history of any threat to security in the locker rooms.

Brannum, 516 F.3d at 498.

Although it may not be known how many students Jeffrey Scofield actually video recorded while at BEHS, and notwithstanding and irrespective of such video recording, the Defendants in this case have admitted to installing the viewing windows for monitoring the students for “safety reasons” without the use of video cameras. This viewing, regardless of the act of recordation, is an invasion of the students’ privacy. “[t]he mere fact that the observation is accomplished by a video camera rather than the naked eye does not alter the privacy expectations of that area.” Acosta v. Scott Lab. LLC, 377 F. Supp. 2d 647, 650 (N.D. Ill. 2005).

As is clear from the Defendants’ filed Answer, as well as their press release, the ostensible and claimed purpose of the viewing windows was purportedly for safety. Regardless of the stated purpose, in this case, BEHS was unable to testify that there were any previous safety incidents at BEHS in the locker rooms before the new school was built in 1998 (Dep. Finneran R. 30(b)(6), P. 19, L. 12-23, **Exhibit #5**). The BEHS Principal further testified and conceded that the use of the viewing windows had no effect on preventing the three previous safety/disciplinary incidents¹ at the school that occurred in the locker rooms since the school was built in 1998 until the windows were boarded up in 2019:

Q. So these were events that were realized that -- that took place, regardless of the fact that you had this viewing window for safety purposes; correct?

¹ “One was a wallet that was stolen, another one was a video of a student in the boys locker room saying inappropriate things, and the other one was a video in the girls locker room of a student who was getting changed, but was being made fun of in that video by the person taking the video.” (Dep. P. Finneran R. 30(b)(6), P. 21, L. 5-14, **Exhibit #5**).

A. Yes.

Q. So the safety purpose of the window was ineffective as it applied to those incidents?

A. Yes.

(Dep. P. Finneran, P. 43, L. 2-9, **Exhibit #3**)

The Brannum Court makes clear that *surveillance of the students in a locker room setting* would need to be reasonably related to security issues in order to surveil students. In Brannum, like in this case, there has been no such history as is evident by the Principal's above cited testimony.

As it pertains to safety, the Brannum Court observed:

There is nothing whatsoever in this record to indicate that the defendants entertained any concerns about student safety or security in the locker rooms that would reasonably justify the installation of the cameras to record all the activities there. The defendants do not claim that any misconduct occurred in these areas in the past or that the plan to install the surveillance equipment in the school locker rooms was adopted because of any reasonable suspicion of wrongful activity or injurious behavior in the future.

Brannum, 516 F.3d at 498.

While at a hypothetical level there might exist a heightened concern for student safety in the "privacy" of student locker rooms, that does not render any and all means of detection and deterrence reasonable.

Brannum, 516 F.3d at 498.

Accordingly, to use safety as a justification for surveillance of a locker room, the Defendants would need to establish either a past problem of misbehavior in the locker rooms, or a reasonable suspicion of wrongful activity or injurious behavior in the future: Defendants could not establish either. Ironically, the implementation of the viewing portals did not prevent or detect a safety event in the locker rooms, instead, it actually created one:

Q. You would agree with me that on the one hand the windows did not ever from the time they were built prevent a safety incident or help detect a safety incident; correct?

A. There is no record that they prevented anything.

Q. That's not the question.

A. Yes. To my knowledge they did not prevent anything.

Q. But they were utilized by a perpetrator to create a safety incident?

A. Yes, Mr. Scofield used the windows.

Q. Had the windows not been there, Scofield could not have used the windows to violate the privacy of the children.

Q. Correct?

A. That would be correct, yes.

(Dep. P. Finneran, R. 30(b)(6) P. 24, L. 23- P. 25, L. 16, **Exhibit #5**).

Dr. Salas, the Plaintiffs' expert psychiatrist testified that the existence of the viewing windows and the blinds created a "pedophile's playground":

Q. Okay. So you're saying that Bishop England should -- the architects who designed Bishop England should not have put a window in that -- from a coaches' office looking into the locker room?

THE DEPONENT: I don't know about window placement in schools, so I can't tell an architect or a school where to place windows. But the privacy concern that I have for this situation is if you have a transparent window, whether it's in the coaches' office, a hallway, a cafeteria, or whatever, and it is a four-by-four peep hole, if you will, for whoever's on the other side where I understand the blinds to be, that the person who is disrobing, that is a pedophile's playground, if you will. That's an opportunity for compromise of safety.

(Dep. A. Salas, P. 72, L. 22- P. 73, L. 18, **Exhibit #4**)

In Johnson v. Allen, 272 Ga.App. 861, 613 S.E.2d 657 (2005), an employer installed a camera behind a ceiling tile above a stall in the women's bathroom. Johnson, 613 S.E.2d at 659. The manager testified he installed the camera after he had heard rumors of employees using and selling drugs on the premises. Id. In addressing the invasion-of-privacy claim brought by the female employees who discovered the hidden camera, the court first noted the use of a bathroom is "an immensely intimate act." Id. at 660. However, the court continued by noting that, when a private

place is not used for its intended purposes, the employer's right to prevent illegal activity must be weighed against the right to seclusion. See id. Yet, there was no evidence the surveillance was conducted as an immediate follow-up to a tip that drugs were being sold or used in the bathroom. Id. Instead, the court reasoned the camera was positioned to view the women in the bathroom continuously, without reasonable limitation. Id. Most notably, the court determined under its standard of review that, although there was no conclusive evidence that the camera was operational at any point in time, the plaintiffs must be afforded all reasonable inferences from the record. Id. at 661. As a result, the court found the **mere presence** of the camera in the women's restroom constituted sufficient evidence to allow the plaintiffs' claims to survive summary judgment. Id.(Emphasis added).

In this case, the Defendants have admitted to actually using the device of the viewing windows in the name of safety. After the lawsuit was announced, Maria Aselage, a spokesperson for the Diocese of Charleston, released the following media statement, which stated in pertinent part:

The windows between the athletics coaches' offices and the boys' and girls' locker rooms were included in the plans and installed in the building in the 1990's for safety reasons. Their purpose was to allow coaches to monitor for fights, bullying, smoking, or any type of inappropriate activity that might occur within the locker rooms.

(Ex. 1, Dep. of M. Aselage, Vol. I, attached hereto as **Exhibit #6**)

Principal Finneran conceded that smoking could not be detected having blinds on the windows. (Dep. P. Finneran, P. 66, L. 3-14, **Exhibit #3**). Eric Aichele, the main architect who designed the school, testified that if the blinds were drawn closed, then it was not possible to monitor the locker rooms. (Dep. E. Aichele, P. 51, L. 20-25, **Exhibit #7**). In deposition testimony, Ms. Aselage admitted the words used in the media statement were chosen carefully, and conceded the word

“monitoring” as used in her media statement is different than the word “reacting” to a situation² (Dep. M. Aselage, Vol. III, P.23, L. 6-20, **Exhibit #9**). Ms. Aselage, to her credit, testified that she would not have prepared her media statement the way she wrote it (above) **if** she had been told there were no safety incidents at the school in the locker rooms that the windows had been used to prevent or detect. (Dep. M. Aselage, Vol. III, P. 32, L. 12- P. 34, L. 13, **Exhibit #9**). At the time, Ms. Aselage took it for granted that there must have been safety incidents (Dep M. Aselage, Vol. III, P. 31, L. 21- P. 32, L. 1, **Exhibit #9**). Ms. Aselage conceded that viewing of children nude or partially nude without their knowledge is an invasion of their privacy (Dep. M. Aselage, Vol. III, P. 67, L. 17-22, **Exhibit #9**). Ms. Aselage conceded that violation of the children’s privacy was entirely preventable:

Q All right. And what I'm asking you about is the conversations and knowledge you've gleaned from talking to Ms. Fowler, Ms. Tucker, Mr. Finneran, Mr. Acquilano and the Vicar General.

A Uh-huh.

Q Okay. So would you agree with me that the viewing of children an invasion of their privacy was, in fact, completely preventable: Just take out the windows?

A **Yes.**

(Dep. M. Aselage, Vol. III, P. 79, L. 18 – P. 80, L. 2, **Exhibit #9**)(Emphasis added).

Ms. Aselage, in her conversations with Diocese personnel, was told that safety issues override concerns about privacy and that safety trumped privacy since 1998 until the windows were boarded up in 2019:

² The Defendants have attempted to distance themselves from the use of the viewing windows in this litigation, by claiming that they were not actively used, or only used reactively if there was a situation in the locker rooms. *See e.g.*, BEHS Answer to Interrogatory #11, July 12, 2021, **Exhibit #8**, “There was no active monitoring responsibility for the adults in the offices, but they would intercede if there was an issue like bullying, fighting, or other discipline issues.”

Q Do you remember earlier testifying that looking at children through windows when they don't know they're being looked at and they're –

A Yes.

Q -- in partial or full nudity, that is an invasion of privacy?

A Yes.

Q Okay. So we know that in 1998, when they were installed, the idea of safety trumped privacy; correct?

A Yes.

Q Okay. And we know that at the end of the first calendar year, there had been no safety events, but, yet, the privacy was still being invaded; correct?

Q Okay. And the same thing true in 1999, 2000, 2001, all the way up until the windows were blocked; correct?

A Yes.

Q Okay. At what point is it that it's no longer about safety?

A I can't make that call.

(Dep. M. Aselage, Vol. III, P. 67, L. 16 – P. 68, L. 19, **Exhibit #9**).

Furthermore, the Defendants have admitted that the posting of surveillance signs outside the locker rooms, as well as plywooding / bricking up the viewing windows (as is the present situation at BEHS) were alternatives to monitoring student safety in the locker rooms in lieu of the viewing windows. (See Requests for Admissions un-responded to and deemed admitted pursuant to F.R.C.P 36(3), **Exhibit #10**). The feasibility of these alternative precautionary measures will allow evidence of the plywooding / bricking up the viewing windows to be shown to the jury. *See* Fed. R. Evid. 407. There may be other adverse consequences to Defendants springing from their acts of spoliation of important evidence.

Not only were alternatives available to the school to monitor students in lieu of viewing

portals, the Defendants themselves actually implemented an alternative policy for safety in the locker rooms *that did not involve use of the viewing windows*. In 2018-2019, the school implemented a new written policy specifically in the “Supervision of Students” section of the Faculty Handbook. (See Ex. 3, Dep. P. Finneran, P. 40, **Exhibit #11**). In this section, there is a sub-section denominated, “Policy for Monitoring School Restrooms and Locker Rooms.” The policy states that, “[t]he Diocese also recognizes that in order schools to provide an environment that is as safe as possible, restrooms and locker rooms must be monitored for inappropriate student activity. Therefore the following protocol will be followed:”

- Coaches and PE teachers also should exercise due diligence when their players/students are using the locker rooms.
 - a. As players/students are preparing for class or practice, the teacher/coach (it is always preferable to have at least two of the same sex available) may open the locker room door, without entering, and announce that students have _____ seconds to finish and exit. The teacher/coach should ALWAYS be immediately outside the locker room door.
 - b. The same would be true after class or practice – students/players should be given a reasonable amount of time to change out of practice clothes. The teacher/coach should open the locker room door, without entering, and announce that students have _____ seconds to finish and exit. The teacher/coach should ALWAYS be immediately outside the locker room door in order to be able to listen for any inappropriate behavior.
 - c. Students/players should NEVER be in the locker room unless a teacher/coach (it is always preferable to have at least two of the same sex available) is outside the door so that should a situation arise (perhaps a scuffle, an argument, a fight) the teacher/coach should immediately call for help, have students/players exit the locker room, and turn the situation over to the appropriate

Approved by the Vicar General of the Diocese of Charleston on July 19, 2018

(**Exhibit #11**).

This policy is a written acknowledgment by the Defendants of the children’s right to privacy and that safety can be ensured without school personnel monitoring children nude or partially nude. Principal Finneran admitted that the above policy to knock and announce yourself provides safety and privacy to the students, and is a reasonable and good rule, although he could not articulate why the policy had not been in place before 2018. (Dep. P. Finneran, P. 57, L. 3-16, **Exhibit #3**). Also noteworthy is the Principal Finneran’s testimony that vaping sensors had been installed in

the locker rooms in 2017 or 2018 to detect smoking, around the same time that the school changed the rules for monitoring the locker rooms. (Dep. P. Finneran, R. 30(b)(6), P. 72, L. 8-23, **Exhibit #5**). **Principal Finneran testified that the school's locker rooms are presently safe without the viewing windows and having the above cited new policy in place for monitoring.** (Dep. P. Finneran, R. 30(b)(6), P. 80, L. 16 – P. 82, L. 9, **Exhibit #5**).

B. The Defendants' Litigation Defense that Other Schools have Viewing Windows is not a Defense to the Torts Alleged.

Setting aside the evidentiary issues for purposes of this motion, the Defendants' basis for justification that other schools have viewing windows is analogous to pointing to the fact that others fail to use reasonable care while operating a motor vehicle. Although the implementation of the viewing windows is not condonable or justified- *unless* there is a reasonable justification for them based upon past safety incidents or likelihood of future events as stated in Brannum- a majority of the four Charleston County School District schools subpoenaed by the Defendants for inspection and photography of their locker rooms demonstrated a concerted effort to obscure or cover the viewing windows. After observing that many of the viewing windows were obscured at the four CCSD school inspections, the undersigned noticed the four schools for Rule 30(b)(6) depositions. Notably, none of the four schools utilized manipulable blinds as did BEHS. And, the CCSD schools testified as to not needing the viewing windows to ensure their students' safety- **unlike BEHS**. The schools testified as follows:

- North Charleston High School: The Assistant Principal testified he is able to account for the safety of the students even though the windows were covered. (Dep. N. Pearson R. 30(b)(6), P. 9, L. 17 – P. 10, L. 5, **Exhibit #12**). He never saw blinds in the locker rooms. (Dep. N. Pearson, R. 30(b)(6), P. 16, L. 2-4, **Exhibit #12**). The windows are either covered with newspaper, paper, a cloth sheet, or a white board. (Dep. N. Pearson, P. 7, L. 3-10, P.

11, L. 1-5, **Exhibit #12**). The covering of the sheet was for the privacy of both the student and the coach. (Dep. N. Pearson, R. 30(b)(6), P. 18, L. 7-11, **Exhibit #12**).

- RB Stall High School: The girl's coaches' office window was covered with paper since the school was constructed in 2010. (Dep. J. Carrick R. 30(b)(6), P. 5, L. 10 – P. 7, L. 7, **Exhibit #13**). There is a boys PE locker room, where it is possible to view students from the coaches' office, however, it is not possible to view the students without them knowing they are being watched. (Dep. J. Carrick, R. 30(b)(6), P. 5, L. 19-22 **Exhibit #13**). There are other locker rooms at the school that do not have viewing windows and the school is still able to ensure the students' safety without them. (Dep. J. Carrick, R. 30(b)(6), P. 19, L. 18-22 **Exhibit #13**).

- Burke High School: Burke High School has retractable monolithic screens that cover the viewing windows since before 2010. The school is able to ensure the students safety with the full screens drawn down and are able to, “supervise the kids without sitting in the office looking through the windows.” (Dep. N. Richardson, R. 30(b)(6), P. 7, L. 11-18, **Exhibit #14**). There have been no real safety incidents at Burke, but if there is horseplay or bullying, they are able to intercede without pulling up the screens and, “if something is going on, usually a kid will say it or you just hear the commotion, and the coaches go in.” (Dep. N. Richardson, R. 30(b)(6), P. 7, L. 24, P. 8, L. 17, **Exhibit #14**). They do not do active supervision through use of the windows. (Dep. N. Richardson, R. 30(b)(6), P. 9, L. 4-7, **Exhibit #14**).

- West Ashley High School: Maria Williams is the social studies teacher and girls' volleyball coach who has been at the school since it opened in 2000. (Dep. M. Williams, R. 30(b)(6), P. 5, L. 1- P. 6, L. 8, **Exhibit #15**). In the girls' locker rooms the windows have been obscured since she took over in 2004. (Dep. M. Williams, R. 30(b)(6), P. 9, L. 14-22, **Exhibit #15**). She was able to secure the safety of her students with the windows covered. (Dep. M. Williams, R. 30(b)(6), P. 11, L. 10-21, **Exhibit #15**). She made sure the windows were covered at the start of each season for privacy. (Dep. M. Williams, R. 30(b)(6), P. 12, L. 14 – P. 13, L. 6, **Exhibit #15**). In her locker room, it was not possible to view the students without them knowing. (Dep. M. Williams, R. 30(b)(6), P. 13, L. 7-13, **Exhibit #15**).

Accordingly, these schools that were constructed with the viewing windows have found them unnecessary to ensure safety and have each made efforts to obscure them to afford their students the privacy they reasonably expect. This is consistent with the testimony of Dr. Salas:

Q. Would it surprise you to know that Whale Branch High School up the street here has exactly that same configuration on what we've heard?

THE DEPONENT: I don't know. I don't know what schools have what setup. But it would not surprise me that maybe what was done in the past when buildings were constructed have needed to make changes and modifications to them.

(Dep. A. Salas, P. 70, L. 9-20, **Exhibit #4**)

Moreover, BEHS cannot demonstrate it ever relied on other schools. Use of other school's windows was not something known or something that was ever discussed by BEHS until after the lawsuit was filed (Dep. M. Aselage, Vol. III, P.86 L. 8 – P. 87, L. 6, **Exhibit #9**). In summary, the design and use of the viewing windows and blinds at BEHS allowed for the students to be monitored while they were not aware they were being viewed. This was an invasion of their privacy. There were alternative means to ensure their safety and their privacy. This has been admitted by BEHS and is consistent with other schools' non-use of the viewing windows.

Confronted with whether the viewing windows is a good idea, Eric Aichele, the designer of the school testified:

Q. . . .Do you still think it's a good idea to put these viewing windows such as we have been discussing here today in offices of athletic staff or other school staff to view students who change, disrobe, in front of those windows?

A. All I can say is it seems to me to have been a fairly common practice going back to the 1970s and even to current schools that have been built. I would have to discuss it with my client to understand their motivation and explain to them what we have discussed today.

Q. In an ongoing way that's what you would intend to do?

A. Correct.

Q. I understand. Let me see if I can help you in that analysis a little bit by asking you this question: Do you remember when you used to be in a department store perhaps and you needed to urinate and you walked over to the restroom area and it said colored on one door and white on the other? That went on for a long time, didn't it?

A. I don't remember seeing signs like that.

Q. You may be too young to have seen those. I certainly remember them, and these fellows I think remember them, too, and I'm confident the jury will remember them. Are you aware that that existed or not?

A. I've seen photos of signage such as that.

Q. That was a bad idea, wasn't it?

A. Looking at it in today's light, yes.

Q. What is it that made it a good idea looking at it in the light of the time that those signs were erected on the bathroom doors?

A. I do not have any idea why it was a good idea.

Q. But you're not prepared to say it was across the board wrong?

A. I have no real opinion on whether it was wrong or right. It was done for reasons that predated my time, so I don't know.

(Dep. E. Aichele, P. 115, L. 24- P. 117, L. 23, **Exhibit #7**).

What Mr. Aichele testified to is telling. What Mr. Aichele could not admit in his deposition was that segregated bathrooms were wrong now and were wrong at the time they were designed and implemented. Similarly, Mr. Aichele conceded reservations about using the viewing windows in the future, although he could not admit that the windows he designed to invade children's privacy were wrong at the time he designed them.

III. Standard Applicable to Motion for Class Certification.

F. R. Civ. P. 23 standards are well known, and have commonly been referred to as numerosity, commonality, typicality, and adequacy.

A. Numerosity.

The Putative Class consists of thousands of identifiable Class Members retrievable through the Defendants' alumni records and easily satisfies the Numerosity Requirement of Rule 23. In applying the requirement that the putative class must be "so numerous that joinder of all members is impracticable," the Fourth Circuit has held that no specified number is needed and that application of the rule is to be considered in light of the particular circumstances of the case. Brady v. Thurston Motor Lines, 726 F.2d 136, 145 (4th Cir.1984). "To satisfy the numerosity requirement of Rule 23(a), plaintiff must show that joinder is impracticable. Lienhart v. Dryvit Systems, Inc., 255 F.3d 138, 147 (4th Cir.2001). No specific number is needed to satisfy this requirement. Brady v. Thurston Motor Lines, 726 F.2d 136, 145 (4th Cir.1984). The "practicability of joinder depends on many factors, including, for example, the size of the class, ease of identifying its numbers and determining their addresses, facility of making service on them if joined and their geographic dispersion." Kilgo v. Bowman Transp., Inc., 789 F.2d 859, 878 (11th Cir.1986); Garcia v. Gloor, 618 F.2d 264, 267 (5th Cir.1980); see also Christman v. American Cyanamid Co., 92

F.R.D. 441, 451 (D.C.W.Va.1981).” George v. Duke Energy Retirement Cash Balance Plan, 259 F.R.D. 225, (D.S.C.2009).

Defendants themselves answered in discovery that “several thousand, perhaps as many as 7,500, who have attended the school at some time between 1998 and 2021 and some or all would have had at least one parent or guardian who paid their tuition.”³ Further, yearly tuition is required to be paid to BEHS on behalf of each student. The significant number of students, and for each student, a tuition payer, evidences that joinder of all class members would be impracticable. On a yearly basis, the enrollment at BEHS from 1998 through 2019 has been 669 on the low end to 910 on the high end. (**Exhibit #16**) Thus, numerosity is clearly met for both the VIEWED STUDENT class and the TUITION PAYER class.

B. Commonality.

1. The Legal Standard for Commonality is well known, and Presents a Low Threshold for Plaintiffs to Meet.

“The commonality requirement of Rule 23 is not a stringent requirement. A single common question may be sufficient to satisfy the commonality requirement for class certification; critical inquiry is whether the common questions are the core of the cause of action alleged.” In re Initial Public Offering Securities Litigation, S.D.N.Y. 2007, 243 F.R.D. 79, adhered to on reconsideration 2007 WL 844710; “Commonality requirement for class certification is a low hurdle and can be met by demonstrating even a single common legal or factual issue.” O'Donnell v. Robert Half Intern., Inc., D.Mass.2008,250 F.R.D. 77; “Commonality requirement for class certification is satisfied when questions of law and fact linking the class members are substantially related to the resolution of the litigation, even though the individuals are not identically situated.” Jacobs v. Osmose, Inc. S.D.Fla.2003,F.R.D.607; “Bussian v. DaimlerChrysler Corp. No.

³ Defendant Bishop England High School’s Answers to Plaintiffs’ First Interrogatories, at # 20-21, **Exhibit #8**.

1:04CV00387,2007 WL 1752059, at *5 (M.D.N.Y.) June 18,2007) (explaining that the test for commonality "is not demanding, and is met when there is at least one issue whose resolution will affect all or a significant number of the putative class members"). In fact, "[t]he commonality requirement is relatively easy to satisfy." Buchanan v. Consolidated Stores Corp., 217 F.R.D. 178,187 (D.Md.2003).

2. All Bishop England Students from 1998 through 2019 used the Locker Rooms and all Locker Rooms had Viewing Windows.

All students used the locker rooms either through Sports or Physical Education. Physical Education was mandatory for every student. (Dep. Male Student, P. 8, L. 12-15, **Exhibit #17**). Viewed Female Student 200 testified she undressed in the locker room. (Dep. Female Student, P. 7, L. 20-21, **Exhibit #18**). Male Student 300 changed clothes in the locker room when he took Physical Education. (Dep. Male Student, P. 9, L. 10-18, **Exhibit #17**). Male Student 300 did not know of anyone at the school that did not change clothes in the locker room. (Dep. Male Student, P. 35, L. 2-4, **Exhibit #17**). Principal Finneran testified that 75% of the student body dating back to 1998 participated in athletics, and 25% participate in Physical Education class. (Dep. P. Finneran, R. 30(b)(6) P. 62, L. 21-25, P.63, L. 12-15, P. 67, L. 5-11, P. 68, L. 9-19, **Exhibit #5**). Accordingly, all students since 1998 either through sports or physical education had to use the Locker Rooms to undress and change. Ms. Aselage agreed that of the percentage of students in the locker room made them susceptible to being monitored. (Dep. M. Aselage, Vol. III, P. 73, L. 6-11, **Exhibit #9**).

3. All students were Exposed through the Use of the Viewing Windows.

Consistent with Ms. Aselage's media statement, Principal Finneran testified that the windows were created for the purposes of monitoring the children in the locker room for such

things as harassment, bullying and smoking. (Dep. P. Finneran, R. 30(b)(6), P. 78, L. 3-8, **Exhibit #5**). Principal Finneran admitted there was monitoring done through use of the windows, but could not testify as to how frequently they were used. (Dep. P. Finneran, R. 30(b)(6), P. 76, L. 1-9, **Exhibit #5**). Principal Finneran testified that there were no official rules or policies given to the different coaches or staff members as to how or when or how often to monitor the children in the locker room, and that this was true from the time the windows were created until they were boarded up. (Dep. P. Finneran, R. 30(b)(6), P. 78, L. 9-18, **Exhibit #5**).

Female Student 200 testified it is not necessary to ask each student to know that they did not give their consent to be viewed by adults, and that she had no reason to suspect adults were viewing her while she was changing her clothes. She testified you would not have to ask individual students to know that this was wrong. (Dep. Female Student, P. 49, L. 13- P. 50 , L. 3, **Exhibit #18**). Ms. Aselage admitted that the students are being looked at is a fact. (Dep. M. Aselage, Vol. III, P. 84, L. 5-7, **Exhibit #9**). Ms. Aselage admitted that the school used the windows to view the students, but that the Diocese felt that it was not actionable:

Q Nobody's ever denied the fact that they were monitoring the children and looking at the children. They deny that it's an actionable cause of action.

A Yes.

Q Is that correct?

A Yes.

Q They are being monitored, in the locker room, in various states of dress and undress. That's a fact; correct?

Q That's not an allegation; correct?

A Yes.

(Dep. M. Aselage, Vol. III, P. 82, L. 23- P. 83, L. 5; P. 84, L. 8-14, **Exhibit #9**)(Emphasis added).

4. Class Representatives Viewed Student Female 200 and Viewed Student Male 300 Suffered Verified Mental Damages upon Learning that the Viewing Windows had been Utilized by Mr. Scofield, a Fact of Damage Common to the Class

Dr. Amanda Salas is a board-certified psychiatrist who personally interviewed and evaluated Class Representatives Viewed Female Student 200 and Viewed Male Student 300. She has offered her medical opinion that the Class Representatives suffered a negative psychological impact upon learning that they could have been viewed while undressing. Dr. Salas' full opinion is reprinted here, below:

Proffered Professional Opinions

The transparent viewing windows into the dressing rooms at Bishop England are a breach of privacy that was not known, recognized, appreciated, or expected by the interviewed users of these facilities. Undressing can be uncomfortable and may be associated with embarrassment. Shame, fear, and nervousness are feelings that one may experience with the process of undressing. The perception of privacy invasion surrounding an undressing experience can bring up these feelings.

Each of the interviewed class representatives articulated an expectation of privacy and respect for their personal space within the Bishop England changing rooms. Upon learning of the natures and risks associated with the viewing window, the interviewed class representatives experienced a negative shift in their emotional state. Both described concerns related to the possibility of having been viewed, photographed, videoed, or made an unknown victim to one's voyeuristic sexual pleasures. Both expressed concern of not knowing, and not being able to know within a degree of certainty, the extent of personal violation to which they were subjected when utilizing the dressing rooms at Bishop England High School. Although neither were aware of having been photographed or recorded from the viewing windows, each expressed thoughts of worry as to whether they may face future embarrassment or humiliation from what could have been photographed or recorded during their use of the changing facilities at Bishop England High School.

Every student who was subjected to undressing before the viewing windows is expected to be impacted. Those persons can have a range of emotions and psychological impacts by having been exposed to the viewing windows, whether exposed by perception or reality. The degree by which an individual is affected hinges on factors unique to each. Impact by the invasion of privacy to which students were subjected while in the dressing rooms at Bishop England High School is clearly directed to the negative.

The opinions included in this report are my professional medical opinions offered to a reasonable degree of medical certainty based on the available information. I reserve the right to supplement this opinion should additional information come forth.

Dr. Salas Report (Dkt. #41-1).

The Defendants have not named a medical expert in this case and as such, the testimony of Plaintiffs' expert, Dr. Salas, is uncontested by a medical expert.

The Defendants in this case deposed the Male and Female Class Representatives. Their testimony is evidence of mental damages. Female Student 200 testified that the news about Scofield taking pictures was a "huge ordeal going throughout the school" and Female Student 200 learned about it from friends. (Dep. Female Student, P. 15, L. 16-24, **Exhibit #18**). Female Student 200 testified to having sustain mental damages from learning that school personnel used the windows to view and photograph students. (Dep. Female Student, P. 26, L. 24 – P. 27, L. 25, **Exhibit #18**). When Male Student 300 learned about Scofield, he felt frustration, anxiety and was upset. He felt bad for those that were photographed as well as for those who were not, stating, "Because they are living in a world of they don't know, which, in some cases, can be worse than knowing." (Dep. Male Student, P. 15, L. 15- P. 16, L. 4, **Exhibit #17**).

Importantly, and for purposes of this motion, **Dr. Salas has given a medical opinion that, "Every student who was subjected to undressing before the viewing windows is expected to be impacted."** Dr. Salas testified at her deposition that every alumnus of BEHS will be impacted,

but that they all will be affected differently. (Dep. A. Salas, P. 67, L. 24 – P. P. 68, L. 10 (**Exhibit # 4**). “The ‘commonality requirement is met if Plaintiffs’ grievances share a common question of law or of a fact.’ [internal citation omitted]. “Plaintiffs argue that they are challenging systematic policies at SLS, which raise many common issues of law and fact. Defendants argue that each of the putative class members would have suffered injuries in a different way. However, the grievances of the Plaintiffs need not be identical. Where, as here, a plaintiff alleges injury from a common policy, the commonality requirement is met.” Romano v SLS Residential Inc., 246 F.R.D. 432,444 (S.D.N.Y.2007). Female Student 200, Class Representative in this matter, testified regarding how learning that the viewing windows were used impacted her:

Q. And not everybody who over the 30 --nearly 30 years that Bishop England's [sic] been on Daniel Island, not everybody's affected the same way by the fact that there are windows in the locker rooms, right?

A. I think everyone's entitled to their own emotions, but when a huge event happens, it can impact each person, and as a whole, it has impacted all of them.

Q. How has it impacted all of them?

A. Because you trust that you're in your school and that you're in a safe environment to keep you safe and then out of nowhere, you receive this information that completely tears down all of that trust and innocence and safety you thought you once had.

(Dep. Female Student, P. 30, L. 15 – P. 31, L. 5, **Exhibit #18**)(Emphasis added).

Dr. Salas also observed in her deposition testimony that the Defendants sending a letter to all students offering counseling was a recognition that this was a wide reaching and impactful event upon the entirety of the student body. (Dep. A. Salas, P. 79, L. 9-19, **Exhibit #4**). And, from the point of view of the students, the Class Members, Dr. Salas described the realization that their privacy was invaded as:

But that is something that upon learning, wow, I was in that space that was utilized just as it was when I was in it, it's going to have that kind of impact in someone's psyche. But the degree and the nature and what one person experiences versus another, that's not necessarily the same.

(Dep. A. Salas, P. 83, L. 19-25, **Exhibit #4**).

South Carolina's state substantive law for invasion of privacy provides a remedy and recourse for the Plaintiffs' mental damages and Dr. Salas' medical confirmation of same:

In an action for wrongful intrusion into private affairs, the damage consists of **the unwanted exposure** resulting from the intrusion. Thus, if the plaintiff proves the four elements needed to establish his cause of action, **the fact of damage is established as a matter of law**. The amount of damage is then to be assessed by the trier of fact. In assessing the damage, the trier of fact may consider the shame, humiliation, and emotional distress suffered by the plaintiff as compensable elements of damage.

Snakenberg v. Hartford Cas. Ins. Co., 299 S.C. 164, 171–72, 383 S.E.2d 2, 6 (Ct. App. 1989)(Emphasis added).

All Plaintiffs need prove in this case is the four elements of the invasion of privacy tort, and then, “the fact of damage is established as a matter of law.” Accordingly, assuming the Plaintiffs prove that their privacy was invaded by use of the viewing portals (and as set forth above, the Plaintiffs believe they have already shown that they have more than enough evidence to present such a showing to a jury), then the “fact of damage is established” for the Class- and then the jury may then consider the shame, humiliation, and emotional distress suffered by the Class Members as compensable elements of damage, and assess damages as they see fit.

Applying the law, it is clear that the tort is designed to compensate for “the unwanted exposure,” assuming the elements of the tort are met. Importantly, it is not necessary for the Class Representatives to “prove” that they were actually viewed or monitored- as Defendants have contended. Viewed Male Student 300 knew of the presence of the windows but never “connected the dots that someone would be videotaping me as the blinds were closed or the possibility that

someone would be videotaping me.” (Dep. Male Student, P. 31, L. 16-23, **Exhibit #17**). Male Student was then asked:

Q. So you're suing because of something that might have happened, but you don't know whether it did or not?

A. I think that's worse than knowing.

(Dep. Male Student, L. 32, L. 3-6, **Exhibit #17**).

The above question posed by the Defendants underscores the Defendants being tone deaf to the gravity of what happened and the actionability of the tort: all that is required is an “**unwanted exposure**” under Snakenburg and not actual proof of viewing. Although a dearth of caselaw on the tort in South Carolina, the Snakenburg’s analysis of an unwanted exposure is consistent with the invasion of privacy law of other jurisdictions⁴.

⁴ See Friedman v. Martinez, 242 N.J. 449, 455–56, 231 A.3d 719, 723 (2020)(“We find that an intrusion on privacy occurs when someone uses a private space where a spying device has been concealed and “the intrusion would be highly offensive to a reasonable person.” *456 Restatement (Second) of Torts § 652B. To bring a claim, the victim does not have to present direct evidence that she was secretly recorded.); Koeppel v. Speirs, 808 N.W.2d 177, 182–85 (Iowa 2011)(“In deciding a standard for Iowa, we think it is important to keep in mind that the tort protects against acts that interfere with a person's mental well-being by intentionally exposing the person in an area cloaked with privacy. See William L. Prosser, Privacy, 48 Cal. L. Rev. 383, 392 (1960) [hereinafter Prosser]... Additionally, the comments and illustrations contained in the Restatement (Second) of Torts make no suggestion that the intrusion into solitude or seclusion requires someone to actually see or hear the private information. See Restatement (Second) of Torts § 652B illus. 3, at 379. Indeed, the very purpose of the tort is to protect the opening up of a private place where the plaintiff seeks seclusion. Prosser, 48 Cal. L. Rev. at 392. If the fact finder finds from the evidence that the device could not have intruded into the privacy of the plaintiff in any manner, the tort of invasion of privacy has not been committed. Yet, if the fact finder finds from the evidence that the device could have intruded into the privacy of the plaintiff, the element of intrusion is satisfied.”); Hernandez v. Hillsides, Inc., 47 Cal.4th 272, 97 Cal.Rptr.3d 274, 211 P.3d 1063, 1078 (2009) (holding a hidden video camera in plaintiffs' office that was capable of being operated by the employer established an intrusion); Kohler v. City of Wapakoneta, 381 F.Supp.2d 692, 704 (N.D. Ohio 2005) (noting the installation of a hidden listening device or camera is enough to establish an intrusion, regardless of whether the devices were actually used, because an invasion consists of an intentional interference with a person's interest in solitude); Amati v. City of Woodstock, 829 F.Supp. 998 (N.D. Ill. 1993)(Court found the defendant's act of placing a recording device on a private telephone line in a police station was intrusive and disruptive and that “it ruins [one's] privacy” because a person “would never obtain the full benefits accorded to a private place if he or she reasonably believed someone would or could be listening.” Amati, 829 F.Supp. at 1010. While the court only decided the tort does not require an allegation that someone actually listened, the rationale it employed emphasized that the full benefits of privacy protected by the tort are diminished when a reasonable person believes someone could have listened.); Harkey v. Abate, 131 Mich.App. 177, 346 N.W.2d 74, 76 (1983) (“In our opinion, the installation of the hidden viewing devices alone constitutes an interference with that privacy which a reasonable person would find highly offensive. And though the absence of proof that the devices were utilized is

5. The Tuition Class Bargained for a Safe Environment and It Was Not Provided One.

BEHS held itself out to the Tuition Class payers as a moral, caring and safe environment to send one's child or children for school and that it would, "seriously curb the possibility of child sexual abuse happening in our parishes and schools." (See BEHS website, **Exhibit #19**). As stated above, **the Principal conceded that viewing children without their knowledge would not be a safe, moral or nurturing environment.** (Dep of P. Finneran, P. 64, L. 12- P. 65, L. 4, **Exhibit #3**) Although common sense and intuitive, one of the top five reasons a parent chooses a private school setting such as Bishop England is improved student safety⁵. Based upon this submission to the Court on the evidence adduced thus far into this litigation, the Defendants failed to deliver upon their representations of safety. It is for the trier of fact to determine how much the Tuition paying Class is entitled to, taking into account that the school did deliver to the Class a quality education notwithstanding the environment in which it was delivered.

C. Typicality.

Typicality requires the class representatives' claims to be "typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Typicality is satisfied if the plaintiff's claim is not "so different from the claims of absent class members that their claims will not be advanced by plaintiff's proof of his own individual claim. That is not to say that typicality requires that the

relevant to the question of damages, it is not fatal to plaintiff's case."); Hamberger v. Eastman, 106 N.H. 107, 206 A.2d 239 (1964)(Court held the plaintiffs were not required to prove the defendant actually overheard or viewed the activities in a secluded place to show an intrusion occurred. Instead, it found an intrusion occurs when the defendant performs an act that had the potential to impair a person's peace of mind and comfort associated with the expectation of privacy).

⁵ The top five reasons why parents chose a private school for their children are all related to school climate and classroom management, including "better student discipline" (50.9 percent), "better learning environment" (50.8 percent), "smaller class sizes" (48.9 percent), "improved student safety" (46.8 percent), and "more individual attention for my child" (39.3 percent)., MORE THAN SCORES An Analysis of Why and How Parents Choose Private Schools, James P. Kelly, III, J.D. and Benjamin Scafidi, Ph.D., November, 2013; <http://www.edchoice.org/wp-content/uploads/2015/07/More-Than-Scores.pdf>

plaintiff's claim and the claims of class members be perfectly identical or perfectly aligned.” Deiter v. Microsoft Corp., 436 F.3d 461, 466–67 (4th Cir. 2006).

Here, there is a link between Plaintiff's claims and those of absent class members. Plaintiffs and the Class Member's claims arise out of the same alleged course of conduct by the Defendants and are based on the same legal theories. Accordingly, the typicality requirement is met. *Deiter*, 436 F.3d at 466 (“The essence of the typicality requirement is captured by the notion that ‘as goes the claim of the named plaintiff, so goes the claims of the class’.”). In DG ex rel. Stricklin v. Devaughn, 594 F.3d 1188 (10th Cir. 2010), the Tenth Circuit Court of Appeals affirmed a District Court’s approval of class certification case where it was alleged that the Oklahoma Department of Human Services had a policy or practice of failing to adequately monitor the safety of children causing significant harm and risk of harm to their safety, health and wellbeing presented an issue of fact common to the entire class. In affirming the district court’s decision on commonality, the Court found that:

All class members, by virtue of being in OKDHS's foster care, are subject to the purportedly faulty monitoring policies of OKDHS, regardless of their individual differences; therefore, all members of the class are allegedly exposed to the same unreasonable risk of harm as a result of Defendants' unlawful practices. Though each class member may not have actually suffered abuse, neglect, or the risk of such harm, Defendants' conduct allegedly poses a risk of impermissible harm to all children in OKDHS custody. Thus, we conclude the district court did not abuse its discretion in finding the requirement of commonality satisfied.

Id. at 1196.

The Court also found typicality because all children that were in the department’s custody were exposed to the same harm:

The shared risk of being subjected to the purportedly unconstitutional practices justified certification. We did not require the named plaintiffs in *Milonas* to prove either every class member had actually been subjected to the controverted practices or every class member had actually suffered constitutionally-cognizable harm as a result of the practices. Similarly, in this case, every class member, by virtue of being

in OKDHS's custody, is subject to OKDHS's monitoring practices or lack thereof and, therefore, “the issue of whether the monitoring practices compromise the safety of foster children is an issue common to the entire proposed class.”

Id. 1197 (10th Cir. 2010)

And, like commonality, typicality exists where, as here, all class members are at risk of being subjected to the same harmful practices, regardless of any class member's individual circumstances. *See Milonas*, 691 F.2d at 938 (finding commonality and typicality where all members of class were in danger of being subjected to certain disciplinary practices regardless of their individual differences). The harm and threat of harm suffered by the Named Plaintiffs as a result of OKDHS's allegedly deficient monitoring practices is typical of the harm and threat of harm suffered by all children in the class because all foster children are subject to OKDHS's challenged, agency-wide monitoring policies. Additionally, Named Plaintiffs allege OKDHS's monitoring policies violate their substantive due process rights to be free from harm while in state custody, the same legal theory that underlies class members' corresponding claims. Due to the common risk of harm and the common underlying legal theory for asserting that risk, the district court acted within its discretion to find that typicality was satisfied.

Id. at 1199.

The same facts are present in this case, where the claims of monitoring the Plaintiffs are typical of the claims of the absent class members and that Class Members were exposed to the same harm.

D. Adequacy.

The adequacy of representation inquiry involves two issues: (1) whether the plaintiff has any interest antagonistic to the rest of the class, and (2) whether plaintiff's counsel is qualified, experienced, and generally able to conduct the proposed litigation. South Carolina Nat. Bank v. Stone, 139 F.R.D. 325, 330–31 (D.S.C.1991). In deciding if the named Class Representatives will adequately represent the interests of the class the court must consider whether the plaintiff “has common interests with the unnamed members of the class” and will “vigorously prosecute the interests of the class.” *See Runion v. U.S. Shelter*, 98 F.R.D. 313, 317 (D.S.C. 1983); Waller v. Seabrook Island Property Owners Ass’n, 300 S.C. 465, 388 S.E.2d 799 (1990) (citing *Runion* as a

decision which “sets forth all criteria to be considered in determining whether a named plaintiff will adequately represent a proposed class.”)(emphasis added).

1. Class Representatives Viewed Student Female 200 and Viewed Student Male 300 Have No Interests Antagonistic to the Rest of The Class.

The Plaintiffs have certainly demonstrated absolute fidelity to his or her respective class and have vigorously prosecuted this case since inception. Female Student filed the lawsuit to “stand up and give a voice for those who were wrongfully abused in the locker rooms.” (Dep. Female Student, P. 18, L. 21-25, **Exhibit #18**). And, that she is suing on behalf of “my student body, to stand up for a wrong situation that was committed in the school of Bishop England.” (Dep. Female Student, P. 19, L. 18-22, **Exhibit #18**). When questioned by defense counsel as to what she wanted to accomplish with this lawsuit, Female Student testified:

Q. What is it that you want to accomplish with this lawsuit?

A. I want all corresponding factors to be held accountable for what happened in May of 2019.

Q. Okay. So what -- you want other people to be held accountable for what Jeffrey Scofield may have done or did?

A. No, I want to represent my student body council and me, as well, in making sure that what happened never happens again.

(Dep. Female Student, P. 24, L. 3-13, **Exhibit #18**).

Upon being asked by defense counsel, “Why do you believe you’re entitled to any money?” Female Student testified she was “not sure if I’m entitled to any money.” When asked why, Female Student clarified her response by stating, “I’m here to stand up for my student body council and raise a voice for those who are not brave enough to do it and to put down my foot and make sure this never happens again.” (Dep. Female Student, P. 25, L. 13-24, **Exhibit #18**). Obviously,

Female Student's role is to testify as to the damages she sustained, and it is for others to decide what she may be entitled to – monetary or otherwise. When asked if Female Student could fairly and adequately represent the interests of former students she testified, "I think I'm going to do as best as I can to represent those that aren't brave enough to have their own voice." (Dep. Female Student, P. 42, L. 20-25, **Exhibit #18**). When Male Student was asked why he filed the lawsuit, he testified:

Q. Why did you decide to file this lawsuit?

A. Because it was imperative that people like me and my fellow classmates have someone stand up for actions like this that happen quite often, as we can see, in environments that it shouldn't, like private institutions where we confide our trust and especially religious institutions where we pay a good sum of money to go.

(Dep. Male Student, P. 17, L. 11-20, **Exhibit #17**).

When Male Student was asked what he wanted to accomplish with the lawsuit, he stated, "I want things like this to never happen again. I think I have had damages done to me and I'm sure my fellow classmates have had damages done to them mentally and maybe physically for all, I can't speak on behalf of them." (Dep. Male Student, P. 17, L. 24 – P. 18, L. 6, **Exhibit #17**). When asked what he was seeking in the lawsuit Male Student said compensation for their damages and loss. (Dep. Male Student, P. 28, L. 7- 16, **Exhibit #17**). During his deposition, the Tuition Payer Class Representative Gary Nestler testified as follows:

Q. Well, how were the people in the class you purport to represent injured?

A. The same way that I feel that I was injured.

Q. That their kids weren't provided a safe environment to go to school ?

A. That is correct.

(Dep. Tuition Payer Gary Nestler, P. 53, L. 7-13, **Exhibit #20**).

When asked what resolution he wants from the lawsuit, Tuition Payer Nestler stated:

A. For those who committed what I would say is egregious, to face whatever penalties, if you will, and then for the school to provide me with financial compensation for my tuition plus what I would think is my duress and my family's duress.

(Dep. Tuition Payer Gary Nestler, P. 68, L. 17-21, **Exhibit #20**).

The Tuition Payer Nestler further testified:

Q. On behalf of the parents, do you believe that providing a viewing window into the locker room where the students could be seen and were seen without knowing that they were seen, is that a safe environment?

THE DEPONENT: It's not only not safe, it's reprehensible behavior. It's disgusting, it's despicable, and it goes against the grain of what we were told, what the teaching, and morality, and the policy of the Catholic church.

(Dep., Tuition Payer Gary Nestler, P. 80, L. 7-18, **Exhibit #20**).

The Tuition Payer also was clear that he would never had sent his child to BEHS and paid the tuition for the same had he known his child would be exploited and viewed when utilizing the locker rooms:

Q. Would any of the parents that you are standing to support in this tuition paying class, have sent their children to that school if they had known—

Q. —that their children would be objectified or viewed?

A. One hundred percent not.

Q. And would you have ever paid a dollar to have that invasion of privacy extended to your child?

A. Unequivocally not.

(Dep., Tuition Payer Gary Nestler, P. 85, L.23 – P. 86, L. 12, **Exhibit #20**)

2. Plaintiff's Counsel is Qualified, Experienced, and Generally Able to Conduct the Proposed Litigation .

“The adequacy of plaintiffs' counsel ... is presumed in the absence of specific proof to the contrary.” George v. Duke Energy Retirement Cash Balance Plan, 259 F.R.D. 225, (D.S.C.2009).

Plaintiffs' counsel is well known to the Court and has experience in handling complex and class action litigation in South Carolina. (**Exhibit #21**, Statement of Qualifications of Proposed Class Counsel.) The Court has no reason to question their credentials and ability to litigate this matter to conclusion, and has thus far tenaciously and competently pursued the Plaintiffs' claims before this Court.

IV. Application of Rule 23(b) Factors to Facts of this Case.

In addition to Rule 23(a), the Plaintiffs must satisfy at least one of the Rule 23(b) factors. “The predominance analysis under Rule 23(b)(3) focuses on ‘the relationship between the common and individual issues’ in the case and ‘tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.’ [citations omitted]. The predominance requirement ensures that “common questions present a significant aspect of the case” such that “there is clear justification”—in terms of efficiency and judicial economy—for resolving those questions in a single adjudication. [citation omitted]. This requirement is satisfied when a common nucleus of facts and law is the central feature of the litigation, and when the “[p]laintiffs have shown that there are plausible classwide methods of proof available to prove their claims.” citation omitted]. Romero v. Securus Techs., Inc., 331 F.R.D. 391, 410 (S.D. Cal. 2018).

Applying the above law to the facts of this case, adjudication by representation is preferable as the issue of unwanted to exposure is common to all students that attended Bishop England High School from 1998 to 2019. All students used the locker rooms, and all had their privacy invaded, without any justification, causing mental damages to a person of ordinary sensibilities as testified to by Dr. Salas. The only question to be resolved is the amount of damages to be assessed by the trier of fact. In contrast to these numerous common issues, the individual questions are few,

and generally only concern issues of the individual damage assessments and calculations. Indeed, differences that “go primarily to damages . . . cannot destroy predominance.” Ambriz v. Coca Cola Co., No. CV 14-00715 SVW, 2015 WL 12683823, at *4 (C.D. Cal. Mar. 11, 2015) *citing* Leyva v. Medline Indus. Inc., 716 F.3d 510, 513–14 (9th Cir. 2013)(“In almost every class action, factual determinations of damages to individual class members must be made. Still we know of no case where this has prevented a court from aiding the class to obtain its just restitution. Indeed, to decertify a class on the issue of damages or restitution may well be effectively to sound the death-knell of the class action device.”) (internal citation and quotation marks omitted). Thus, “[t]he amount of damages is invariably an individual question and does not defeat class action treatment.” *Blackie v. Barrack*, 524 F.2d 891, 905 (9th Cir.1975); *see also Yokoyama*, 594 F.3d at 1089 (“The potential existence of individualized damage assessments ... does not detract from the action's suitability for class certification.”).Accordingly, the predominance test is satisfied here. Of course, should any Class member decide to opt out and pursue their claim individually, Rule 23(b)(3) allows for that as well. For the tuition class, all tuition payers lost the same benefit of the bargain for a safe environment.

As Rule 23(a) and (b) are easily met in this case, the Plaintiffs request the following Certification Order from the Court to define the Class as follows:

1. An Order that this Court certify the *Viewed Class*, consists of all those persons, or such persons’ personal representatives, heirs or assigns, wherever located, who have or in the future may have any claim against Defendants The Bishop of Charleston, a Corporation Sole, Bishop England High School, Tortfeasors 1-10, The Bishop of the Diocese of Charleston, in his official capacity, and Robert Guglielmone, individually, arising out of, based upon, or in any way related to, or involving injuries or damages claimed as a result of Jeffrey Scofield or any other Bishop England High School employee or agent monitoring, watching, viewing, spying, prying, besetting, photographing or videotaping them, or other such similar type conduct, through the viewing windows of the coaches’ or

other BEHS officials' offices into the locker rooms while attending Bishop England High School from 1998 at least through 2019.

2. An Order that this Court certify the *Tuition Class*, consists of all those persons, or such persons' personal representatives, heirs or assigns, wherever located, who have or in the future may have any claim against Defendants The Bishop of Charleston, a Corporation Sole, Bishop England High School, Tortfeasors 1-10, The Bishop of the Diocese of Charleston, in his official capacity, and Robert Guglielmone, individually, arising out of, based upon, or in any way related to, or involving claims for reimbursement of tuition paid to Defendants as a result of Jeffrey Scofield or any other Bishop England High School employee or agent monitoring, watching, viewing, spying, prying, besetting, photographing or videotaping them, or other such similar type conduct, through the viewing windows of the coaches' office into the locker rooms while attending Bishop England High School from 1998 through 2019.
3. An Order that based upon the submissions of the Plaintiffs, that the Court finds that:
 - a. The Viewed Class and Tuition Class is so numerous that joinder of all members is impracticable;
 - b. There are questions of law or fact common to the Viewed Class and Tuition Class;
 - c. The Representative Plaintiffs will fairly and adequately represent the interests of the Viewed Class and Tuition Class and Plaintiffs' counsel is qualified to represent the Viewed Class and Tuition Class;
 - d. The prosecuting separate actions by or against individual class members would create a risk of adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.
4. Appoint the Undersigned as Class Counsel.

Respectfully submitted,

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Attorneys for Plaintiffs

December 13, 2021
Mount Pleasant, South Carolina

2:21-cv-00613-RMG Date Filed 12/13/21 Entry Number 67-1 Page 1 of 37

EXHIBIT 1

Deposition of Mary Anne Tucker

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF SOUTH CAROLINA
3 CHARLESTON DIVISION

4 DEPOSITION OF MARY ANNE TUCKER

5 OCTOBER 5, 2021

6 GARY NESTLER, VIEWED STUDENT FEMALE 200, VIEWED
7 STUDENT MALE 300, on behalf of themselves and all
8 others similarly situated,

9 Plaintiffs,

10 vs. CASE NO. 2:21-cv-0613-RMG

11 THE BISHOP OF CHARLESTON, A CORPORATION SOLE;
12 BISHOP ENGLAND HIGH SCHOOL; TORTFEASORS 1-10; THE
13 BISHOP OF THE DIOCESE OF CHARLESTON, in his
14 official capacity; and ROBERT GUGLIELMONE,
15 Individually,

16 Defendants.
17
18
19
20
21
22
23
24
25

26 TIME: 12:51 PM

27 LOCATION: THE RICHTER LAW FIRM
28 MOUNT PLEASANT, SOUTH CAROLINA

29 REPORTED BY: RONDA K. BLANTON, RPR
30 CLARK & ASSOCIATES, INC.
31 CHARLESTON, SC 29422
32 843-762-6294
33 WWW.CLARK-ASSOCIATES.COM

Deposition of Mary Anne Tucker

2

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6 BY: BRENT S. HALVERSEN, ESQ.

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8 ON BEHALF OF THE DEFENDANTS THE BISHOP OF

CHARLESTON, BISHOP ENGLAND HIGH SCHOOL, THE

9 BISHOP OF THE DIOCESE OF CHARLESTON, AND ROBERT

GUGLIELMONE:

10

TURNER PADGET GRAHAM & LANEY

11 BY: RICHARD S. DUKES, ESQ.

40 Calhoun Street, Suite 200

12 Charleston, SC 29401

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Deposition of Mary Anne Tucker

4

1 MARY ANNE TUCKER,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MR. RICHTER:

6 Q. Good morning. Would you state your
7 name, please. Your full name into the record.

8 A. Mary Anne Tucker.

9 Q. And what was your maiden name?

10 A. Bolchoz, B-O-L-C-H-O-Z.

11 Q. I need to ask you a couple of questions
12 about the process today and explain a couple
13 things to you about the process. I'm actually
14 required to do that.

15 First of all, this is a deposition. So
16 you're now under oath, which means you're now a
17 testifying witness in this proceeding, which
18 restricts you in certain ways. Mostly, you can't
19 talk about your testimony while you are a
20 testifying witness.

21 As we -- the way it'll go is: Have you
22 ever been through this before?

23 A. I have.

24 Q. Oh, okay. Well, shoot. I can save a
25 little time here then. Was it -- were you

Deposition of Mary Anne Tucker

5

1 deposed -- what kind of case was it that you were
2 deposed in?

3 A. I don't know the answer to that. What
4 are my choices?

5 Q. Big case. Old case.

6 A. Yeah, exactly.

7 Q. No. We're just kidding.

8 You know, it may have been a personal
9 injury case. It may have been a business
10 dispute, that kind of thing. Domestic cases,
11 sometimes people get deposed in those.

12 A. I don't know what category it would fall
13 in, to be honest with you.

14 Q. What was the issue in the case?

15 A. It was related to the school.

16 Q. To Bishop England?

17 A. Uh-huh.

18 Q. And it was an injury case of some type?

19 A. I mean, it was over someone who we
20 fired.

21 Q. Okay. Okay. Well, then that -- it's a
22 civil deposition, and process is going to be the
23 same.

24 A. Okay.

25 Q. I pose questions to you, and you give

1 answers back to me. We have to be careful about
2 how we do that. I'll try to pose narrow, clear
3 questions to you so that you can easily
4 understand them; and if you can respond in the
5 same way. You can explain your response as fully
6 as you want to.

7 But if we can fall in the track of doing
8 that, letting each of us speak and not
9 interrupting each other, it goes a lot faster if
10 we fall in that track. So that's what I hope we
11 have luck with today.

12 Some things you can't do is you can't
13 nod or make gestures as an answer.

14 A. Right.

15 Q. Because the reporter can't get that.
16 You're being recorded by audio. You're also
17 being recorded by a stenotype method.

18 A. Okay.

19 Q. So that's what's going on. If you need
20 anything, just say so.

21 A. All right.

22 Q. Are you impeded in any way from being
23 able to give your deposition this afternoon?

24 A. I am not.

25 Q. Okay. Thank you.

Deposition of Mary Anne Tucker

7

1 What is your address, please?

2 A. My home address is 50 Lord Calvert
3 Drive, Charleston, South Carolina 29407.

4 Q. That's West Ashley?

5 A. It is.

6 Q. And you are married?

7 A. I am.

8 Q. And who's your husband?

9 A. Joel Tucker.

10 Q. And how long have you -- this is a lead-
11 in for me to brag about how long I've been
12 married. Rich doesn't like that, but correct me.
13 How long have you been married?

14 A. It'll be 30 years in November.

15 Q. 53 for me.

16 MR. DUKES: 54.

17 Q. We, once in a while, try to break the
18 atmosphere a little and get through these things.

19 Now, what is your -- you've been married
20 for 30 years. First marriage?

21 A. Yes.

22 Q. And do you have children?

23 A. I do.

24 Q. How many?

25 A. Four.

Deposition of Mary Anne Tucker

8

1 Q. How old are they?

2 A. 22, 24, 26, and 28.

3 Q. Oh, boy. Are they near Charleston?

4 A. Two of them are and two of them are
5 away.

6 Q. And are you employed currently?

7 A. I am.

8 Q. And please state your place of
9 employment.

10 A. I'm employed at Bishop England High
11 School.

12 Q. In what capacity?

13 A. Associate principal.

14 Q. I'm sorry. I said vice -- maybe I
15 said --

16 A. Assistant.

17 Q. Assistant principal. Associate
18 principal is the proper nomenclature. I
19 understand now.

20 How long have you been at BE?

21 A. Started this go-around in 2005; and then
22 prior to that, I taught in -- let me think. '89
23 and '90, those two school years.

24 Q. When did -- did you go to Bishop
25 England?

Deposition of Mary Anne Tucker

9

1 A. Oh, absolutely.

2 Q. And when did you finish?

3 A. '84.

4 Q. I know your mother.

5 A. Uh-huh.

6 Q. Everybody who's passed those halls knows
7 your mom. Maybe one day, they'll all know you;
8 but everybody knows your mother and has asked for
9 some kind of, you know, courtesy from us or help
10 from us. She always gives it.

11 And what is your educational background
12 beyond high school?

13 A. Graduated from Clemson in 1988, and I am
14 currently working on a Master's at Loyola
15 Marymount University in California.

16 Q. Do you do that --

17 A. Online, uh-huh.

18 Q. Can you do the whole program online?

19 A. You can.

20 Q. Wow. Have you ever been involved in
21 litigation, first of all, as a party?

22 A. You're going to have to explain that.
23 Like I said, I've been deposed before.

24 Q. No. I know that. I'm asking you if --
25 that's as a party in a lawsuit.

Deposition of Mary Anne Tucker

10

1 A. Have I ever sued anyone?

2 Q. Or been sued by anyone.

3 A. No.

4 Q. But you have been a witness, apparently,
5 in some kind of litigation?

6 A. I was deposed, but that was as far as --

7 Q. Oh, you didn't testify beyond that?

8 A. No.

9 Q. So you were a deponent in some kind of
10 litigation.

11 A. Uh-huh.

12 Q. Well, if you don't understand anything,
13 just say so.

14 A. I will.

15 Q. If you need anything, just say so. Your
16 needs will be met. I don't anticipate this
17 taking a great amount of time.

18 What does your husband do?

19 A. He works at Total Wine.

20 Q. Oh, yeah. Okay. Is that the one over
21 here?

22 A. It's the one in West Ashley.

23 MR. RICHTER: Isn't there one over
24 here?

25 MS. RICHTER: There is now.

1 Q. And how long has he been -- you say in
2 the wine business or in the retail business?
3 What do you say?

4 A. Wine business for about four years.
5 Retail business since he went into the working
6 world.

7 Q. When did you say you finished BE?

8 A. '84.

9 Q. '84. And y'all had those at that time
10 I -- I've had children who went through similar
11 times. But when you went through, y'all had
12 those nice, sort of, plaid uniforms?

13 A. We did.

14 Q. Did you save yours?

15 A. It's hanging on the wall of my office.

16 Q. Good for you.

17 A. Uh-huh, uh-huh.

18 Q. Good for you.

19 Can you tell me, please, about your
20 family here? One of the things we have to be
21 concerned about is drawing a jury when we try
22 this case, and so I'm interested whether you have
23 relatives with a last name other than Bolchoz or
24 Tucker.

25 A. Yes. My -- I have cousins that are

1 Runeys. Not Paul and his siblings but Billy
2 Runey was my uncle. Corbett. My sister was
3 married to a Corbett before Michael died. She is
4 now Kennerty. That's all that I can think of.
5 Tucker, obviously. Those are all boys. So
6 they're all Tuckers. I think that's all that I
7 can call to mind.

8 Q. Are you -- do you have any military
9 background?

10 A. I do not.

11 Q. Any criminal background?

12 A. I do not.

13 Q. Do you have any kind of disabilities?

14 A. None that I know of.

15 Q. Are you -- do you have any history of
16 disciplinary action by way of honor code
17 violations that got you suspended from school or
18 anything like that?

19 A. No, I do not.

20 Q. Now, can you describe your duties
21 generally at first for your current position; and
22 then we may break that down a little bit.

23 A. Okay. I work with students. I work
24 with faculty members. I work with things like
25 scheduling and calendars at the school in terms

1 of the administrative side of things.

2 If we have a student who's gotten into a
3 significant amount of trouble, that's when I,
4 typically, get involved. My Dean of Students
5 deals with things and the other disciplinarians
6 deal with initial disciplinary issues; but if it
7 becomes, say, an academic integrity situation or
8 a suspension situation, then I get involved with
9 those.

10 With faculty, same sort of setup. My
11 Academic Dean deals with most of the observations
12 and things of the faculty members. If we have a
13 teacher that is not performing the duties that we
14 would hope that they would, if they're just not,
15 you know, doing as good a job as we would hope,
16 then -- then I will get involved, sit down, and
17 have a conversation with the Academic Dean and
18 the teacher, deal with evaluations of the
19 teachers at the end of the year.

20 Again, set up things like calendars and
21 schedules and things like that for both teachers
22 and students.

23 Q. Are you a disciplinarian or the
24 disciplinarian?

25 A. No. I am involved in discipline, again,

1 once it gets to a higher level; but my Dean of
2 Students is really the main -- the primary
3 disciplinarian, and then there are also three
4 other disciplinarians as well.

5 Q. Do you have responsibilities for
6 retaining records of the school?

7 A. Only things that I'm involved with. So,
8 again, if we have a child that's being suspended,
9 I keep that notification along with the
10 disciplinary probation information.

11 If we have a teacher that, you know,
12 needs to make changes in their scope of work; and
13 if there's a performance -- like a performance
14 plan that we put them on, then I keep those,
15 yeah.

16 Q. Do you keep those in your own office, or
17 are they stored elsewhere?

18 A. I keep those in my own office.

19 Q. Somebody -- we -- we got documents
20 produced by the school, and somebody produced
21 three reports of activities in the --

22 A. Right. The lockers.

23 Q. I don't know whether someone said this
24 or not; but I had on my mind that you had been
25 the one that, sort of, put your hand on that or

1 put your finger on those.

2 A. I actually did reach out to my Dean of
3 Students to -- she really keeps those kinds of
4 records because those -- there's a summary, I
5 think, of the -- the wallet issue that -- that
6 she -- I believe she had that summary.

7 And then the two other issues with the
8 videoing or photographing of the two students, I
9 think -- I think I had one of the summaries, and
10 I think she had the other. I'd have to check. I
11 don't remember.

12 Q. Other than those three, are there any
13 other such records?

14 A. No.

15 Q. Okay. Thank you.

16 Can you explain to me, we asked for
17 those in June.

18 A. Uh-huh.

19 Q. And we were sent -- well, we asked
20 for -- well, we asked for a lot of stuff in June;
21 but we didn't get -- well, we asked for things
22 which would have included the faculty handbooks.
23 We got one, and then yesterday we got a bunch
24 more.

25 A. Uh-huh.

1 Q. Do you have any explanation for what the
2 delay was in us getting those?

3 A. Those I don't keep on my computer. My
4 Academic Dean keeps those 'cause she's the one
5 that makes adjustments and changes them as we go
6 from one year to the next.

7 Rich asked me to get those; and it
8 probably was, I don't know. A month, six weeks
9 ago. Could have been longer. I have no idea.
10 And it was in a host of conversation about many
11 other things, and I forgot to go back to the Dean
12 and ask for those copies from her.

13 And then it occurred to me again -- I
14 think it was last week. And so she sent all, you
15 know. I don't know if she had 10 or 15 of them
16 on her computer that she forwarded to me, and
17 then I forwarded to Rich the next week. Nothing
18 nefarious. Just so --

19 Q. No. I understand what you're saying.

20 What I'm trying to understand is why you
21 weren't -- why there was a delay in asking y'all
22 to gather them up and find them.

23 A. Right.

24 Q. Mr. Finneran was very confident about
25 your time. He said, "Oh, she can do that in a

1 day or so."

2 A. Uh-huh. But, again, those are not ones
3 that I keep. Those are ones that Nancy keeps.
4 So I totally forgot to --

5 Q. I heard what you said. Excuse me. I'm
6 talking over you.

7 Do you have any policy-making authority
8 at the high school?

9 A. Singularly, no. We have an
10 administrative team that, if there's going to be
11 a change of policy, that we discuss -- a lot of
12 policies that we deal with come straight from the
13 Diocese; but singularly, I don't make policy.

14 Q. Do they come from the Superintendant of
15 Education or from someone else?

16 A. I would say they come from the Catholic
17 Schools Office, and he is part of that office.
18 He is relatively new. He started about a year --
19 maybe I guess a year, maybe not quite a year-and-
20 a-half ago.

21 Q. Bill --

22 A. Bill Ryan is his name.

23 Q. Ryan? I'm sorry.

24 A. Prior to Bill it was Sandra Leatherwood.

25 Q. Is she retired?

Deposition of Mary Anne Tucker

18

1 A. No. She's still there. She just works
2 with accreditation business now; and Jackie
3 Zebrowski, who was the associate superintendent
4 for secondary schools, I believe, was her title.
5 And now she has a different title as well, but
6 they all work in conjunction with Bill in that
7 office.

8 Q. We deposed Mrs. -- you said her name.

9 A. Zebrowski?

10 Q. No.

11 A. Leatherwood?

12 Q. Leatherwood. And we deposed
13 Miss Leatherwood, and at that time -- this has
14 been a couple years ago. At that time, I think
15 she had been 44 years or something --

16 A. Uh-huh.

17 Q. -- in the education system --

18 A. And she's still there.

19 Q. -- of the Diocese.

20 A. Uh-huh.

21 Q. When are disciplinary records of
22 students destroyed?

23 A. Typically -- I know we're talking about
24 just the hard copy version of them. Within a
25 year of graduation.

Deposition of Mary Anne Tucker

19

1 Q. After graduation?

2 A. Uh-huh, oh, yeah.

3 Q. So does that mean that if a student is a
4 freshman, starts accumulating a record -- if I
5 can say it that way -- you'd maintain that
6 freshman, sophomore, junior, senior, and then a
7 year after that even?

8 A. Right.

9 Q. Do you retain paper hard copies, or are
10 those electronically maintained?

11 A. The -- the paper copy, when a -- when a
12 teacher writes a referral, it's on a triplicate
13 form; and one of those forms is retained by the
14 disciplinarian. So that's what I'm talking about
15 being, you know, destroyed within after a year of
16 graduation.

17 The electronic file is kept -- to be
18 honest, we have changed student information
19 systems so many times over the last couple of
20 years that, you know, just because of different
21 inadequacies on the parts of different systems
22 that we've tried. But that information does not
23 roll over; and so the system that we're using
24 now, which is Facts SIS -- it used to be RenWeb.
25 We have been using that for two years.

1 So we have that information on these
2 current kids in the system now, but it doesn't --
3 it doesn't pull over from, I think, MNS was the
4 system before that.

5 Q. So you missed all that part of several
6 systems?

7 A. Uh-huh, uh-huh, yes.

8 Q. I see. There's no paper records?

9 A. From the -- like I said, the triplicate
10 form is the paper form.

11 Q. For the write-up initially.

12 A. Right, right.

13 Q. And that would be true in every incident
14 of the four years of this guy's unglamorous
15 career that we've been talking about awhile ago?

16 A. Yes. So if he starts as a freshman and
17 continues through his senior year, there's a
18 freshman disciplinarian. Typically, we have four
19 different disciplinarians, one for each year. So
20 the freshman disciplinarian deals with those
21 discipline issues that year. He files them in an
22 accordion file alphabetically. Those paper
23 copies in those get passed to the sophomore
24 disciplinarian and then to the junior, then to
25 the senior.

1 Q. Why were the parents and/or tuition
2 payers of Bishop England students -- from the
3 beginning of the new school over here on Daniel
4 Island, why were they not notified that there
5 were viewing windows in each of three locker
6 rooms?

7 A. I don't know.

8 Q. Did you ever discuss that with anybody?

9 A. No, I don't.

10 Q. If you had children who were made to
11 change clothing and you knew, perhaps, in front
12 of a 4 foot x 4 foot window at school and people
13 could see them, would you not want to know that?

14 A. I do have children that went through
15 Bishop England on the current campus and -- and
16 it has never even crossed my mind.

17 Q. Does that mean you would not have cared
18 that people could look at your naked children --
19 let me get the question out. That people could
20 look at your children naked through a 4 foot x
21 4 foot viewing window --

22 MR. DUKES: Object to the form.

23 Q. -- in the locker room?

24 A. Could you repeat that?

25 MR. RICHTER: Sure. Would you mind

1 reading that back, Madam.

2 (The pending question was read back by
3 the reporter.)

4 A. No, I wouldn't say that. If I knew that
5 someone was looking at them, I would certainly be
6 concerned.

7 Q. How about is it not enough to know that
8 they're subject to be looked at through a 4 foot
9 viewing window?

10 A. Like I said, my student -- my children
11 did go through there and played sports; and so,
12 again, knowing that they were in those locker
13 rooms and knowing that those windows were there
14 as a parent, I was aware of it, yes.

15 Q. And so are you saying it was okay with
16 you that your children were made to --

17 A. What I'm saying -- I'm sorry. Go ahead.

18 Q. Let me just get the question out.

19 Are you saying that you had no objection
20 to your children, while students at Bishop
21 England High School, being made to disrobe in
22 front of a window through which someone can look
23 at them?

24 A. Trying to see if that's a yes or a no
25 answer. I know that my children used those

1 locker rooms and that there were windows there.

2 That's --

3 Q. I'm trying to -- I asked more than --
4 that was not the question. I can just read it
5 back to you.

6 A. Okay.

7 Q. Are you saying that you had no objection
8 to your children, while students at Bishop
9 England High School, being made to disrobe in
10 front of a window through which someone can look
11 at them?

12 A. They weren't made to disrobe.

13 Q. They were not in the -- that's not what
14 the locker room's for?

15 A. No. But your -- sounds as though you're
16 suggesting that someone made them disrobe in
17 front of a window intentionally so that they
18 could be viewed.

19 Q. I'm suggesting that basic hygiene would
20 dictate that if your children are going in that
21 dressing room for PE class, let's say, and it's
22 hot and they're going to go outside and run a
23 mile, that they change their clothes into
24 something they could run in.

25 A. Right.

1 Q. And then come back and clean up after
2 that and re-dress.

3 A. Right, uh-huh.

4 Q. That's what I'm saying.

5 A. Right.

6 Q. That's all I'm saying.

7 A. Okay.

8 Q. Not that anybody took a whip to them or
9 anything else. I'm just trying to understand
10 you, not the children, why that's okay with you.

11 A. Well, they're in there with their
12 classmates; and they're all -- all in there
13 together changing their clothes. So they know
14 what they're doing.

15 Do I -- would I condone someone looking
16 at them? You know, I guess I can't understand
17 where you're going with the question.

18 I know my kids were in there. I know
19 they were changing clothes, and I know there was
20 a window in the coaches' office.

21 Q. And you're satisfied to expose your
22 children to that?

23 A. I am satisfied? Yes.

24 Q. Now, were your children viewed?

25 A. Not to my knowledge.

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1 Q. Do you understand they might have been
2 and you not know it?

3 MR. DUKES: Object to the form.

4 A. I know that there's a window in the
5 locker rooms, yes.

6 Q. Do you not know that they may have been
7 viewed and you not be aware of that?

8 MR. DUKES: Object to the form.

9 A. And so what is the question?

10 Q. That's the question. Do you not know
11 that they may have been viewed and you not be
12 aware of that?

13 A. Do I not know? Say it again.

14 Q. The question was: Do you not know that
15 they may -- your children may have been viewed
16 and you not be aware of that?

17 A. Yes.

18 Q. You do know that?

19 A. I -- I know that they were in the locker
20 rooms, and there are windows in the locker rooms.

21 Q. Through which they may have been viewed?

22 A. Yes.

23 Q. Now, what can you tell me are the
24 protocols about the people who sit in their
25 coaches' offices -- some of them are close in

1 distance to those windows that we're talking
2 about. What is the protocol concerning viewing
3 of the children in the locker room?

4 A. I don't know.

5 Q. There's 700 children there; right?

6 A. About 725.

7 Q. Yeah. And you may not care whether your
8 children get looked at nude. Does it occur to
9 you that the other 724 sets of parents may very
10 much be concerned that their children are exposed
11 to being viewed nude in a Bishop England High
12 School locker room?

13 MR. DUKES: Object to the form.

14 A. Okay. So what is the question?

15 MR. RICHTER: Read it back, please,
16 Madam Reporter. I was wrong about how long this
17 is going to take. It's going to take a lot
18 longer than what I said a while ago.

19 (The pending question was read back by
20 the reporter.)

21 A. It does occur to me.

22 Q. And do you not feel that you have a
23 responsibility, as the second in command at
24 Bishop England High School, to insulate those
25 children from the indignity of being made to get

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1 nude in front of a window?

2 MR. DUKES: Object to the form.

3 A. There were blinds in front of those
4 windows --

5 Q. So what?

6 A. Can I finish my statement?

7 Q. Oh, I'm sorry. I thought you were --
8 yes.

9 A. There were blinds in front of those
10 windows that were closed.

11 Q. How do you know they were closed?

12 A. Every time I saw those windows, those
13 blinds were closed.

14 Q. How many times did you see the windows?

15 A. I have no idea.

16 Q. Did you see them every day?

17 A. No.

18 Q. Did you see them every week?

19 A. Yes. Probably.

20 Q. By going in the coaches' offices?

21 A. Right.

22 Q. What do you go in the coaches' offices
23 for?

24 A. Any one of a number of things. To talk
25 to a -- to talk to coach.

1 Q. We get as much time --

2 A. Right.

3 Q. Start at the top and go to the bottom.

4 Why do you go in coaches' offices?

5 A. To talk to a coach.

6 Q. About what?

7 A. I don't remember.

8 Q. And how frequently do you do that?

9 A. It just depends on the business of the
10 day.

11 Q. And if a guy is delivering a birthday
12 cake to a coach, delivering it --

13 A. It goes to the main office.

14 Q. And if the electrician goes into the
15 coaches' office to fix a faulty light switch, can
16 he not see through those windows?

17 MR. DUKES: Objection.

18 A. He would -- he would be accompanied by
19 our Director of Maintenance.

20 Q. So when the janitor comes in every
21 afternoon, who accompanies him?

22 A. He goes by himself because he's an
23 employee.

24 Q. And why is he not accompanied?

25 A. Because he's an employee.

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1 Q. Well --

2 A. Into the coaches' office?

3 Q. Yeah.

4 A. He goes by himself.

5 Q. So anybody who's an employee does not
6 get accompanied?

7 A. No.

8 Q. They do not get accompanied?

9 A. They do not get accompanied.

10 Q. Thank you. Like Scofield, for example,
11 he didn't get accompanied, did he?

12 A. Right.

13 Q. And he looked through the windows,
14 didn't he?

15 A. He did.

16 Q. And you don't know who else looked
17 through the windows, do you?

18 A. I do not.

19 Q. And the fact of the matter is: Someone
20 can stand in the hall and look through the
21 coaches' door window, small window, over the
22 coaches' head and through the blinds into the
23 locker room?

24 A. No. I do not know that to be a fact. I
25 just stated it was a fact of the matter. No, I

1 do not believe that.

2 Q. What would prevent it?

3 A. The blinds being closed.

4 Q. Suppose they're not closed.

5 A. I don't -- I have never seen the blinds
6 not closed.

7 Q. But you don't see the blinds every day,
8 do you?

9 A. I -- all I can answer is to what I know,
10 and I've never seen --

11 Q. And you know whether you've seen the
12 blinds every day, and you must answer that
13 question.

14 A. I do not see the blinds every day. All
15 I'm telling you is what, in my experience, when I
16 have seen those windows, those blinds have been
17 closed.

18 Q. Why were the windows taken out in
19 these -- each of these three locker rooms?

20 A. As best I recall on my dates, the
21 Jeffrey Scofield situation happened in May of
22 2019. You had come and taken pictures of the
23 windows. I don't remember when that was. I feel
24 like it was the summer. June or July maybe of
25 2019.

1 Q. It was May.

2 A. It was May?

3 Q. Wasn't the summer. I think it was May.
4 I'm not sure.

5 MS. RICHTER: It was May. I think
6 it was the 14th.

7 Q. May. Fairly shortly after the event.

8 A. Okay. And we waited until it was August
9 of 2020. We had plywood that had been put up in
10 the windows immediately after the situation
11 happened. We had parents, obviously, immediately
12 were concerned over the whole situation and were
13 upset about it, which was understandable.

14 So we initially covered them with
15 plywood. The plywood did not look great. We
16 left it there for the 15, 16, 15 months,
17 something like that, and then determined that it
18 was time to take the windows out and simply cover
19 them completely.

20 Q. And, of course -- I don't remember the
21 date of the spoliation letter. Mr. Finneran --
22 I'm not going to -- we're going to try to avoid
23 duplicating work that we've already done the best
24 we can.

25 On May the 7th. I knew that was a date.

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1 Are you aware that I wrote this letter to
2 Mr. Finneran and Bishop Guglielmone saying,
3 "Don't tamper with the evidence. You're required
4 to preserve it"?

5 A. So am I aware that you sent this? I am
6 now that I read it.

7 Q. Till today you were not aware of?

8 A. I don't know. Two years is a long time.
9 I may have seen it before, but I don't recall
10 having seen it.

11 Q. It wasn't sent -- it wasn't emailed
12 directly to you.

13 A. Okay.

14 Q. It was emailed directly to other people,
15 but not to you.

16 A. Uh-huh.

17 Q. But my question, what I'm trying to find
18 out is: Who made the decision to take the
19 windows out?

20 A. I guess I'm not seeing in here anything
21 about not taking out the windows.

22 Q. Did you have a chance at lunchtime to
23 discuss that with anybody?

24 A. I can read the --

25 MR. DUKES: I'm going to instruct

1 her not to answer that question. It's covered by
2 attorney-client privilege.

3 Q. I'm not asking you about your lawyer. I
4 don't want to know what your lawyer said to you.
5 I know the kind of things he says to people.

6 A. That seems, sort of, threatening.

7 Q. Don't feel threatened. I'm simply
8 asking you a question.

9 A. Okay. Which is?

10 Q. Which is, did you discuss this before
11 coming into this deposition with anybody where
12 you -- this issue that you just raised in this
13 somehow doesn't use the word "window" or whatever
14 it is that you said a moment ago?

15 MR. DUKES: To the extent he is
16 inquiring into anything that you and I discussed,
17 I'm instructing you not to answer that question.

18 Q. Are you refusing to answer that
19 question?

20 A. I am.

21 Q. Thank you. Let me get this back,
22 please.

23 Do you -- has anybody ever explained to
24 you the consequence that can come to those who
25 violate spoliation --

1 A. No.

2 Q. -- letters? Okay.

3 And to the parties in this litigation --
4 I don't remember the names of all the parties --
5 but the parties in the litigation, did anybody
6 explain to you that they can incur consequences
7 at the hand of the federal judge once he learns
8 that this has been disregarded?

9 A. No.

10 Q. Well, I represent to you that that's the
11 truth.

12 MR. DUKES: Object to the form.

13 MR. RICHTER: That's not a
14 question. It's a representation.

15 Q. Now, have your children ever been looked
16 at by persons other than their care providers in
17 their homes in a state of nudity --

18 MR. DUKES: Object to the form.

19 Q. -- to your knowledge?

20 A. Not to my knowledge.

21 Q. And is there any circumstance, other
22 than medical care and that sort of thing, any
23 circumstance in which you can testify, as you are
24 doing under oath here today, that it's okay to
25 look at children who are disrobed?

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1 A. No.

2 Q. And why did you do it?

3 A. I didn't do it.

4 Q. You didn't do it. You're not a
5 representative of Bishop England High School?

6 A. I am a representative of Bishop England
7 High School. I didn't look at anyone nude.

8 Q. I understand what you're saying.

9 A. Okay.

10 Q. Why did Bishop England High School do
11 it --

12 MR. DUKES: Object to the form.

13 Q. -- Madam Representative of Bishop
14 England High School?

15 A. I don't know.

16 Q. Did you ever ask anybody?

17 A. Ask anybody what?

18 Q. Why did you do that?

19 A. No, I did not ask anybody that.

20 Q. It was clearly a bad idea, wasn't it?

21 MR. DUKES: Object to the form.

22 A. What are we talking about? Could you be
23 more specific?

24 Q. In viewing windows and looking through
25 them.

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1 A. Oh, I don't know.

2 Q. You don't know whether it was a bad idea
3 or no?

4 A. No. I don't know why it was done.

5 Q. That was not my question. That was my
6 earlier question.

7 A. Okay.

8 Q. The last question was: I asked you,
9 "Did you ask anybody about that? Why it was
10 done?" And then I asked you, "Did you ever ask
11 anybody about that?" "No, I did not ask anybody
12 about that." That was your answer.

13 Then we -- then I said, "It was clearly
14 a bad idea, wasn't it?" That's what the question
15 was --

16 A. What is the "it"? What is the "it"?

17 Q. What we're talking about here.

18 A. Which is what?

19 Q. You want me to read this to you again?

20 A. That's fine.

21 Q. What is your degree in from college?

22 A. Why?

23 Q. 'Cause you're under oath and have to
24 answer under oath right now.

25 A. Political science and French.

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1 Q. Not English.

2 A. Not English. Political science and
3 French. "It" as a pronoun is very amorphus.

4 Q. Here's what we're talking about,
5 beginning with this question: Why did Bishop
6 England High School -- I asked if there was any
7 circumstance under which it was acceptable to
8 look at children, other than medical treatment
9 and care and that sort of thing.

10 A. Uh-huh.

11 Q. Any circumstance in which it was okay to
12 look at children nude. You said no.

13 Do you recall that?

14 A. I do recall that.

15 Q. Then I said, "Then why did you do it?"
16 And you said, "I didn't do it." By that you
17 meant -- you clarified I didn't -- I was not a
18 viewer.

19 A. Right.

20 Q. And we talked about the fact that you're
21 a representative of Bishop England High School,
22 but you didn't look at anybody nude.

23 Why didn't -- here comes the meaningful
24 exchange.

25 Question, why did Bishop England High

1 School do it?

2 Mr. Dukes objected to that. He doesn't
3 want you to answer that, but you have to.

4 And your answer was, I don't know.

5 And then the next question was: Did you
6 ever ask anybody?

7 Your answer was, ask anybody what?

8 And I said -- repeated the question.
9 Why did you do that?

10 And you said, no, I didn't ask anybody
11 that.

12 And then I said, it was clearly a bad
13 idea, wasn't it?

14 And you said, what are we talking about?
15 Could you be more specific?

16 A. So it was clearly about an idea not to
17 ask anyone that?

18 Q. No. To look at children through 4 foot
19 viewing windows in a locker room.

20 A. Yes.

21 Q. And it took y'all how long to figure
22 out -- after the Scofield incident was
23 discovered, how long did it take you after that
24 to realize that those viewing windows were a bad
25 idea?

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1 MR. DUKES: Object to the form.

2 A. We took -- we covered the windows
3 immediately, as soon as we found out about
4 Jeffrey Scofield.

5 Q. That's what I thought you said. Close
6 to that a while ago, I think you said.

7 And they had been put in in 1998;
8 correct?

9 A. I assume so when the building was built.

10 Q. We've have documentation about all that.

11 A. Uh-huh.

12 Q. What I guess I'm trying to ask you is:
13 If it was a good idea from 1998 through early May
14 of 2019, which is 21 years, if it was a good idea
15 for that period of time, why was it all of a
16 sudden a bad idea to have those windows?

17 A. Because it was brought to our attention
18 they were misused.

19 Q. So nobody at the school ever made an
20 effort to figure out are these necessary to run
21 our school? 4 foot viewing windows in three
22 dressing rooms?

23 A. I don't know.

24 Q. You never thought of it?

25 A. No.

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1 Q. And you never were a part of any
2 conversation about it?

3 A. No.

4 Q. Now, do you know -- you've never
5 discussed this with the principal, Mr. Finneran?

6 A. Discussed what?

7 Q. The viewing windows in Bishop England
8 High School, three bathrooms, 4 foot x 4 foot
9 viewing windows, students naked on the other
10 side, staff members or coaches on the other?

11 A. We discussed it at length as soon as the
12 Jeffrey Scofield issue was brought to our
13 attention.

14 Q. And what did he say made it okay?

15 A. He didn't say it was okay.

16 Q. What did he say?

17 A. We talked about covering windows, which
18 we did.

19 Q. Does "covering windows" mean something
20 other than getting rid of this viewing portal?

21 A. Well, initially we covered the windows
22 with plywood; and then 15 months later, we had
23 the windows taken out and bricked over.

24 Q. You lost the utility of the windows when
25 you put plywood over it; right?

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1 A. Yes.

2 Q. Couldn't look through those windows
3 anymore because they're blocked by plywood?

4 A. Unless the plywood came down, yes.

5 Q. But it didn't come down. Y'all left it
6 up to obscure the view into the locker rooms.

7 A. Yes.

8 Q. That's what I'm asking about.

9 A. Okay.

10 Q. What -- did Finneran ever express that
11 this was okay because of whatever reason he gave
12 you? I don't know that reason, if he gave one;
13 but that's what I'm asking you about.

14 Did he ever make such an expression?

15 A. I'm sorry. Did he make an expression
16 that what?

17 Q. Give us the question.

18 What did Finneran ever express that
19 this -- that this is okay -- was okay because of
20 whatever reason he gave you? And, again, I don't
21 know what -- if he gave a reason, what the reason
22 was.

23 I don't know that reason if he gave one,
24 but that's what I'm asking you about. Did he
25 ever make such an expression, say that these

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1 viewing windows were okay?

2 A. Not to my knowledge, no.

3 Q. Did he ever express that they're not
4 okay, we need to cover these up?

5 A. Once the Jeffrey Scofield situation
6 happened, yes.

7 Q. What did he say?

8 A. I don't remember exactly.

9 Q. Who did he say it to?

10 A. I don't remember.

11 Q. Where did this conversation take place?

12 A. I don't know.

13 Q. You may be able to answer that. I'm not
14 sure. We'll see.

15 Is it okay with your husband that his
16 children are viewed nude?

17 A. I can't answer that for him.

18 Q. You don't know that.

19 A. I -- I'm sure I do; but that's a
20 question for him, not for me.

21 Q. Well, no, it's to you. I pose that to
22 you. If you don't know, you can say "I don't
23 know." But you just said you do know. That
24 means you have to answer the question.

25 A. I would think that he would not be okay

1 with that.

2 Q. And that's not new knowledge to you,
3 that understanding?

4 A. That's not.

5 Q. I mean, that's from 30 years married
6 now.

7 A. Right.

8 Q. I'm going to assume a courtship before
9 that. You know him.

10 A. I do.

11 Q. Did he ask you why did y'all have those
12 windows in there?

13 A. He did not.

14 Q. And what is the policy at Bishop England
15 High School today about monitoring locker rooms?
16 First monitoring them. And then we'll go on to
17 some other stuff.

18 A. You know, the expectation is that, for
19 example, our PE teachers stand close to the doors
20 so they can hear if there's anything going on
21 that, you know, if you could hear if a fight is
22 happening or something like that. They stand at
23 the doors to remind the kids to hurry up and
24 holler in there and things like that. Is that
25 what you're looking for? Is that --

1 Q. I'm just looking for the truth.

2 Whatever you --

3 A. That's the truth.

4 Q. That's what I want. I want to know what
5 the policy is of Bishop England.

6 A. That's the policy.

7 Q. And then I want to ask you where I can
8 go to read it.

9 A. The faculty staff handbook has all of
10 that type of information in it. Those ones that
11 you got.

12 Q. Page 42.

13 A. I don't know the pages.

14 Q. And who promulgated that policy?

15 A. Who created it? That's relatively new
16 policy in terms of having two, you know, male
17 faculty members at the male PE door, two female
18 faculty members at the PE door if there's a -- if
19 there's an issue.

20 So I would -- and I'm -- I would have to
21 check this to be sure, but the Diocese originally
22 came up with that wording within the last handful
23 of years. I don't know exactly when it was.

24 Q. July of 2018 --

25 A. Okay.

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1 Q. -- is the answer.

2 A. Okay. Thank you.

3 Q. And do you know who promulgated that
4 policy? What individual, if it was an
5 individual?

6 A. I -- when you say "promulgated," who
7 actually typed it in? Wrote it down? Probably
8 Jackie Zebrowski but --

9 Q. I'm not asking who did the staff's
10 stenographic work on it.

11 A. Okay.

12 Q. I'm asking who promulgated with it?
13 Came up with it, articulated it. Says, "This is
14 our policy. I have the right to make it."

15 A. That policy came from the Diocese. The
16 one specifically you're talking about.

17 Q. The Diocese is not a who. Who in the
18 Diocese came up with it?

19 A. That's what I say. Jackie Zebrowski, I
20 think, was still associate superintendent for
21 schools, secondary schools; but anything she
22 would have done would have gone through Sandra
23 Leatherwood at that point and would have gone
24 through the Vicars General at that point.

25 Q. How many Vicars General were there at

1 that time, July of 2018?

2 A. Two. I -- I know there was at least one
3 because that was Monsignor Harris. Monsignor
4 Groves was promoted to Vicars General, but I
5 don't know when that was.

6 Q. But maybe those two?

7 A. Uh-huh, yes.

8 Q. And does a Vicar General have the
9 ability to promulgate policy for the Diocese of
10 Charleston?

11 A. That I don't know.

12 Q. Do you understand the concept of
13 invasion of privacy or usurpation of privacy?

14 MR. DUKES: Objection to form.

15 A. I believe that I do.

16 Q. You have a right to your privacy. I'm
17 sure you must understand that.

18 A. I do.

19 Q. And if I do something to invade that
20 privacy, do you understand that I commit a wrong
21 against you?

22 A. I do.

23 Q. And do you understand that you're
24 entitled to be compensated for that wrong being
25 committed against you?

1 MR. DUKES: Object to the form.

2 A. I don't know that to be the case but --

3 Q. Well, if I look at you changing your
4 clothing, do you think that I should not
5 compensate you for doing that?

6 A. I don't know.

7 Q. I wonder if you can answer this, please.

8 Is it a part, at least, of your job to
9 ensure the safety and welfare of the students who
10 were entrusted to you and others at Bishop
11 England High School?

12 A. Yes.

13 Q. And, in fact, Bishop England publicly
14 touts that it has many beneficial things for its
15 students; right?

16 A. Right.

17 Q. One of those things is that -- Bishop
18 England has a mission statement, doesn't it?

19 A. It does.

20 Q. I'm going to read to you from that
21 mission statement. Then I want to ask you a
22 question too about it.

23 "The school endeavors to promote the
24 spiritual, intellectual, and physical growth of
25 the individual through the combined efforts of

1 parents, guardians, and faculty by establishing
2 the best possible environment for learning, a
3 climate of safety, trust, respect for the
4 individual, and an appreciation for the
5 acquisition of learning."

6 I'd like for you to tell me how looking
7 at students being less than fully clothed creates
8 respect for that individual.

9 MR. DUKES: Object to the form.

10 A. I -- I don't know the answer to that.

11 Q. Well, how can it? Can it -- does it
12 speak respect for the individual student?

13 A. I -- again, I don't know the answer to
14 that.

15 Q. Well, what do you do there? I mean,
16 you're vice principal, aren't you?

17 A. Associate principal.

18 MR. DUKES: Object to the form.

19 Q. If you see people looking through a
20 window watching students changing clothes, do you
21 stop that?

22 A. I have never seen that.

23 Q. That's not my question. If you do see
24 that, is that a thing you stop?

25 MR. DUKES: Object to the form.

1 A. So you're saying, hypothetically, if I
2 saw someone looking through a window, which I
3 have never done, at students that were nude, yes,
4 I would stop that.

5 Q. Why?

6 A. Because it's not the right thing to do.

7 Q. It's reprehensible, isn't it?

8 A. I don't know.

9 Q. You don't know whether that's
10 reprehensible?

11 A. No.

12 Q. If that's your testimony under oath
13 today, so be it.

14 Now, have you ever taught your children
15 that someone violating their privacy by viewing
16 them surreptitiously -- or directly not
17 surreptitiously -- nude is a reprehensible thing?

18 MR. DUKES: Object to the form.

19 A. Have I ever directly taught my children
20 that?

21 Q. Yeah.

22 A. I don't know if I've ever used the word
23 "reprehensible" with them.

24 Q. I'm not asking you if you quoted to them
25 the same language that I just stated to you.

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1 A. Okay.

2 Q. I guess we can go back to Square No. 1.
3 We'll just walk through the whole thing.

4 You have four children.

5 A. I do.

6 Q. Who taught them morals?

7 A. My husband and I.

8 Q. You were intimately involved in that,
9 weren't you?

10 A. My husband and I, yes.

11 Q. That's not my question. You were
12 intimately involved in that, weren't you?

13 A. Absolutely. Absolutely.

14 Q. Now, did you teach your children to
15 respect the privacy of others?

16 A. I assume so. I -- I -- yes. I don't
17 know what we're getting at.

18 Q. We're getting at a truthful answer to
19 each question --

20 A. Uh-huh, right.

21 Q. -- as it's posed.

22 A. Right.

23 Q. And I want to know if you taught your
24 children to respect the privacy of others?

25 A. I -- I don't know. I guess it depends

1 on what your definition of "explain to them the
2 privacy of others" is.

3 Q. Well, what did you tell them about
4 looking at others when those others were in a
5 private place or engaged in a private --

6 A. I did not tell them anything about that.

7 Q. -- or engaged in a private activity?

8 A. I did not tell them anything about that.

9 Q. So as far as your children know, walking
10 in a bathroom that somebody's using is an okay
11 thing. Is that a fair statement?

12 A. No. I think it's common sense they
13 would know not to do that.

14 Q. Even at Bishop England, it would be
15 common sense. Fair enough?

16 A. Not to walk into a bathroom when
17 someone's using it?

18 Q. Yes.

19 A. Yes.

20 Q. Why is that? Why is that any different
21 than a locker room?

22 MR. DUKES: Object to the form.

23 A. Why is using the restroom different from
24 using --

25 Q. No. Going in and seeing people in the

1 restroom, why is that different from seeing
2 people in the locker room?

3 A. I don't know.

4 Q. Do you think it's a safe environment for
5 children to have to change before a viewing
6 window?

7 A. I think that having the viewing windows
8 there in case of a situation that was a fight,
9 something like that, that's where there's safety
10 in having those windows there.

11 Q. Are you today -- is Bishop England, not
12 you -- but as Bishop England today protecting the
13 students and providing them a safe place to be?

14 A. Yes. We do everything that we can to
15 provide them a safe place to be.

16 Q. And while the windows were in place, was
17 Bishop England providing the students a safe
18 place to be?

19 A. Yes.

20 Q. Then why did you change them?

21 A. Because once we found out about the
22 Jeffrey Scofield issue, we determined that those
23 windows were not the -- were not necessary and
24 needed to be covered up.

25 Q. Were not necessary?

1 A. Uh-huh.

2 Q. What is it about the Scofield incident
3 that is any different from the fact that every
4 single day since 1998, the beginning of school in
5 1998, children had to parade before those windows
6 in various states of nudity?

7 MR. DUKES: Object to the form.

8 Q. What's the difference that made you
9 realize you had to get rid of these windows?

10 A. Because he -- he did what he did. He
11 viewed the kids with, you know. I don't know
12 what his purpose was, but in the way that he
13 recorded the kids. We determined that was --
14 they were not -- they shouldn't be there any
15 longer.

16 Q. He put that recordation on a Bishop
17 England device, didn't he?

18 A. He -- no. He put it on his phone; and
19 when he set up the iPad, he used his personal
20 Gmail account. I don't know anything about
21 setting up iPads and such, but he used his
22 personal Gmail account to set up the iPad. I
23 guess when this happened, his phone and
24 everything on it dumped onto that iPad.

25 Q. Say that last part again. I'm sorry. I

1 missed every word.

2 A. I guess they synced. His phone and the
3 iPad synced because he used his personal Gmail
4 account to set up that iPad; and so whatever was
5 on his phone, then, carried over to the iPad.

6 Q. Because it was plugged into his phone?

7 A. I don't think so. I think it just -- I
8 don't know. I'm not that technologically savvy;
9 but because the same email address was used to
10 set up the iPad and was used, I guess, on his
11 phone, pictures, videos then that were on his
12 phone were also viewable on the iPad.

13 MR. DUKES: We just need to bring
14 in a 10-year-old to explain it to us all.

15 MR. RICHTER: They can do it.

16 MR. DUKES: Can we take two
17 minutes?

18 MR. RICHTER: Yeah, sure. You
19 can't -- I think I told you this. I'm required
20 to. You're not allowed to speak about your
21 testimony on breaks.

22 (Recess taken 1:48 p.m. to 1:57 p.m.)

23 BY MR. RICHTER:

24 Q. The windows at Bishop England are now
25 actually cement blocked up, aren't they?

1 A. Cinder blocked.

2 Q. Cinder blocked. Whatever you call it
3 now.

4 Are the students safe in there now, in
5 the dressing rooms now?

6 A. I believe they are safe.

7 Q. Then why did you need windows there?

8 A. I don't know why the windows were put
9 in.

10 Q. I'm asking you why the school needed
11 windows there if the children are safe in the
12 locker rooms without there being windows?

13 A. I don't know. I don't know.

14 Q. Do you agree that the windows were
15 unnecessary as is evidenced by the fact that
16 children are safe in there now, or you wouldn't
17 put them there behind --

18 MR. DUKES: Object to the form.

19 Q. -- a solid wall?

20 MR. DUKES: Object to the form.

21 A. No. I agree that we took the windows
22 out because of what Jeffrey Scofield did.

23 Q. That's not the question.

24 A. Okay.

25 Q. Do you agree that the windows were

1 unnecessary as evidenced by the fact that
2 children are safe in there now, or you wouldn't
3 put them there?

4 A. No, I don't agree with that.

5 Q. Behind it -- may I finish the sentence?
6 Behind a solid wall. You don't agree with that?

7 A. I don't agree with that.

8 Q. What is it you disagree with?

9 A. Let me see. So I don't agree that
10 they -- I agree that they are safe now. Yes.
11 But do I agree that the windows were unnecessary?
12 I can't -- I can't answer that because I don't
13 know what the rationale was to put them in there.
14 I didn't make the decision to put the windows in
15 when the school was built.

16 Q. So what did the windows provide to
17 enhance the safety of the children that --

18 A. If there was a fight -- sorry.

19 Q. Let me just finish the question. Let me
20 get the question on the record.

21 What did the windows provide by way of
22 enhancing the safety of the children that is not
23 provided by the solid brick or block wall that's
24 in place now?

25 A. Right.

1 MR. DUKES: Object to the form.

2 A. You know, if there was -- I mean, I
3 would assume that you would be able to hear
4 better through -- through glass than a cinder
5 block wall, perhaps. If there was a fight going
6 on or some sort of bullying going on that could
7 then be addressed because somebody could see it
8 through the window.

9 Q. Then if you lessened the safety of the
10 children by blocking up the wall, taking away the
11 window that you could see the fight you just
12 referenced as it began, why would you do that?

13 A. Because of what Jeffrey did. Scofield.

14 Q. So you -- okay. Now, you can't testify,
15 can you, that nobody before Jeffrey Scofield
16 videoed nude children in the dressing room?

17 A. Can I testify --

18 MR. DUKES: Object to the form.

19 A. No, I can't testify that anybody did or
20 did not.

21 Q. That's what I was trying to say.

22 A. Uh-huh.

23 Q. Now, what -- when you get a report of
24 some sexual transgression against one of your
25 students at BE, what do you do? What happens at

1 that point?

2 A. All right. So what do you mean by
3 "sexual transgression"?

4 Q. The worst case scenario is rape.

5 A. No. That's never happened.

6 Q. Well, what kind of sexual events get --
7 have been reported to you concerning students at
8 Bishop England High?

9 A. The most -- the most recent thing that's
10 probably the only thing I can think of in terms
11 of a sexual nature is, unfortunately, students
12 sexting, sending pictures, you know, nude,
13 partially nude pictures of themselves to another
14 student.

15 Q. In the school?

16 A. I don't know. No. The --
17 unfortunately, the ones that I've seen, the
18 pictures are not taken at school; but they're
19 brought to our attention at school, and we dealt
20 with it at school.

21 But, no, it was -- if -- if one student
22 sent something to another student or one student
23 requested, "send me nudes," that sort of thing,
24 that's the type of thing that we have had to deal
25 with.

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1 Q. How do you learn of that?

2 A. Sometimes a parent will intercept a -- a
3 text message or something like that. Sometimes
4 parents have the capability to, you know,
5 surreptitiously view what the child is sending
6 through their phone, whatever.

7 So it'll be a parent saying, "This child
8 is asking my child for nude pictures." Sometimes
9 it'll be another student. Sometimes kids are
10 brilliant enough to put things up on Snapchat
11 which, you know, is supposed to go away rather
12 quickly; but somebody can screenshot something.
13 So there again, far more savvy technologically
14 than we are.

15 Q. I think I understand what you're saying.

16 What I'm trying to stammer out -- and
17 I'm not sure -- I just want to make the record
18 complete. I'm not sure I got this out.

19 Have you ever had reported to you a
20 sexual assault of a Bishop England student?

21 A. I just want to make sure I get this
22 right.

23 So you're talking about, like, a student
24 sexually assaulting another student? Is that
25 what you're --

1 Q. No. I didn't say that. I said a Bishop
2 England student being sexually assaulted.

3 A. And you mean rape --

4 Q. I mean -- I don't mind doing it that
5 way, if that is helpful to you. Yeah, an alleged
6 rape, yeah. That's a good place to start.

7 A. No. I --

8 Q. Assume that that -- that you get that,
9 that that comes in to you. Some student has been
10 raped. What is it that you would do? What would
11 be kicked into place, sort of, protocol?

12 A. We are mandatory reporters. So we would
13 have to report that to the authorities, report it
14 to the Diocese. Obviously, have -- who gets the
15 report, if it's Patrick, if it's me, whatever.
16 We're mandatory reporters so we have to do that.

17 Q. And how quickly do you report those
18 things?

19 A. As soon as it happens.

20 Q. But you've got -- had no experience of
21 having to do that?

22 A. For a rape, no.

23 Q. Do you conduct an investigation before
24 you report the event that's been reported to you,
25 or do you pick up the phone and call the

1 authorities?

2 A. This is, again, a hypothetical situation
3 because we're -- we haven't had to deal with a
4 rape situation, thankfully.

5 No. I mean, if someone -- if a child
6 has come forth to say, "I have been raped," we're
7 immediately calling the authorities.

8 Q. You're not -- well, I don't want to put
9 words in your mouth. I guess I want to ask you,
10 are y'all geared up to do anything other than
11 call the authorities?

12 A. I mean, we have a counseling office that
13 certainly, you know. We have a mental health
14 counselor in our office now as of this year, but
15 what do you mean -- when you say "geared up,"
16 what do you mean exactly?

17 Q. Well, you're not in the business of
18 preserving semen, for example.

19 A. No, no, we are not.

20 Q. I don't mean to --

21 A. No. I agree. No.

22 Q. -- be gross in any way. That's a
23 critical part of maintaining the evidence, you
24 know.

25 A. Uh-huh.

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1 Q. That's what I was trying to ask you.

2 Okay. Thank you.

3 Now, how about we talked in terms of a
4 rape; and I realize what -- where that is on the
5 scale.

6 A. Right.

7 Q. But other places on the scale, non-
8 penetration sexual assault, have you had to deal
9 with reports of those kinds of things?

10 A. I have had a parent tell me something
11 about a child that, you know, that they dealt
12 with the authorities; but from the perspective of
13 I just want you to know that my child has been
14 through this sort of thing, but not something
15 that we had to report because it's already been
16 reported.

17 Q. I think I understand.

18 When the windows were taken out of the
19 coaches' offices connecting to the dressing
20 rooms/locker rooms, what -- did you observe that
21 pursuit? Were you on the scene when it happened?

22 A. No, I was not.

23 Q. Do you know what happened to the
24 materials? The windows themselves, for example?

25 A. No, I don't.

1 Q. And you haven't seen them since then,
2 since they were removed?

3 A. The materials? No.

4 Q. We came over -- Rich, you were -- you
5 would have been there. We came over the second
6 time about measurements or photographs or
7 something. And someone -- and I think it was
8 Patrick Finneran. I think he said they were
9 thrown away, but I don't remember who said it.

10 A. I think that I actually reached out to
11 Mike Darnell, who's our Director of Operations
12 and such; and he was the one -- I think he told
13 me 'cause I think you asked that question while
14 we were there.

15 Q. That's right. In the hallway.

16 A. Uh-huh. And I don't remember if he
17 was -- if Mike was there or if I texted Mike to
18 ask him that question, and he said that they were
19 disposed of.

20 Q. You may have passed that on.

21 A. Uh-huh, uh-huh.

22 Q. But you don't remember specifically, but
23 they're gone is the point?

24 A. They're gone.

25 Q. They're not -- what I'm trying to

1 establish is: We don't have the ability to test
2 those windows in any way ourselves if they're in
3 the trash. A year ago in the trash.

4 A. Right, right.

5 Q. Wherever they went.

6 Now, were you part of any meetings
7 deciding whether or not to remove those windows
8 and block the walls, the openings up?

9 A. I was part of a phone conversation about
10 the windows being bricked over.

11 Q. With whom?

12 A. Jackie Zebrowski.

13 Q. Just the two of y'all?

14 A. I don't know, you know, to whom Jackie
15 spoke about it; but I spoke directly to Jackie.

16 Q. No. But I mean on the phone call.

17 A. Yes. It was just Jackie.

18 Q. Do you know anything about priests of
19 the Diocese of Charleston sexually molesting
20 priests or seminarians of the Diocese?

21 A. I do not.

22 Q. Would you be surprised to learn that?

23 A. I would be disappointed to learn that.

24 Q. Me too. And it's happened, and I
25 learned it; and I'm glad to spare you from that

1 discussion, if you don't know anything about it.

2 A. Good.

3 Q. We can go on.

4 A. Good.

5 Q. I would like to ask you about hiring
6 people at the school.

7 What is the process for being hired at
8 the school? If somebody wants -- sends in a
9 letter, says, "I want a job. I'm a great"
10 whatever. "I'm a great basketball coach" or "I'm
11 a great physics teacher," what happens?

12 A. Typically, they send in a resumé. We
13 determine if we want to interview them. If we
14 interview them, if we entertain the notion of
15 hiring them, then there's the process of, you
16 know, the background screen, going through the
17 Safe Haven training, boundary training business.
18 And there's, you know, obviously, paperwork that
19 has to be filled out and things like that. But
20 that's -- is that --

21 Q. Yeah. Where does it go? Who gets it
22 and who makes the call?

23 A. Mike Darnell, who is, again, our
24 Director of Operations, handles the background
25 screening and, I guess, the request once, you

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1 know, they've signed off saying they can be
2 background screened, he takes care of that.

3 He takes care of having them -- he,
4 basically, provides the information they have to
5 fill out, whether it's with regards to signing
6 off on a background screen, the Safe Haven
7 business. There's a statement from the Diocese
8 about the protection of minors. That statement
9 that has to be signed.

10 So he -- he provides all of that to the
11 candidate; and then once the candidate, you know,
12 passes all that, is hired, then that information
13 goes to Cindy Hart, who's our Director of
14 Finances and Human Resources. She houses that
15 information.

16 Q. And she sets up the payroll method and
17 all of that kind of thing?

18 A. Uh-huh, uh-huh.

19 Q. Now, as to the background checks, you
20 had -- I say you. Bishop England -- had a fellow
21 named McClellan, whose function was a volleyball
22 coach.

23 A. He was an assistant, uh-huh.

24 Q. And I'd like to know whether you did a
25 background check on him.

1 A. I don't know. I wasn't involved with
2 his hiring.

3 Q. So where would that record reside?
4 Because I'm going to subpoena it or ask for it to
5 be produced.

6 A. If it exists -- and I just wasn't
7 involved in his hiring; but it would go to Cindy
8 Hart is where all of those personnel files are
9 kept, to my knowledge.

10 Q. I understand. But he was clearly there
11 for some period of time.

12 A. He was, yes.

13 Q. So why would it not exist?

14 A. Well, he was, as I recall, an assistant
15 volleyball coach. He wasn't the head volleyball
16 coach.

17 Q. I think you're correct.

18 A. So I just don't know. I don't know
19 if -- I don't know how -- I don't know the
20 particulars about his hiring. I simply don't
21 know. So I'm not trying to be evasive. I don't
22 know.

23 Q. If a kid is -- I shouldn't say that. We
24 say the word "child" in my family. Now I just
25 transgressed.

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1 A. Right.

2 Q. If a child, a female volleyball player,
3 is fondled by a volleyball coach, does it make
4 any difference whether he's an assistant coach --

5 A. It does not.

6 Q. Is she any less fondled than if he were
7 the head coach?

8 A. Certainly not.

9 Q. So he couldn't have become that coach
10 without having a background check. You agree
11 with that, don't you?

12 A. I would say that that should be the
13 case. He should have been background checked.

14 Q. And what about Scofield? Was a
15 background check done on him?

16 A. I wasn't involved with his hiring
17 either. I would assume so but I -- I just don't
18 know. Cindy Hart would, again, be the repository
19 for all of that. I don't know.

20 Q. Where is she physically?

21 A. Cindy? She's in that main building.

22 Q. On the campus?

23 A. Oh, yes, absolutely. If you know where
24 the teachers' lounge is, she's in the book
25 office, if that helps at all; but she's right

1 across from the teachers' lounge.

2 Q. But she -- if anybody's going to be able
3 to answer me, she's the one that talks to the
4 candidate, it sounds like.

5 A. Thank you.

6 Q. Book office. I was kidding you earlier
7 about those plaid uniforms, and you said you
8 still got it on the wall.

9 A. I do.

10 Q. I don't know when you were there exactly
11 how it was conducted; but as I say, we've put
12 three daughters through Bishop England, and we
13 didn't have uniforms when I was there. We got --
14 we were the first ones to have neck ties, as a
15 matter of fact.

16 In any event, as I understand it and as
17 I remember from our own children passing through
18 and friends' children passing through, there
19 would be, for example, a book night where your
20 child may have studied geometry this year and
21 biology this year and have two textbooks that you
22 may have paid \$50 a piece for.

23 A. Uh-huh.

24 Q. And you can utilize this book night that
25 the school puts on to let, now my child coming

1 behind him, purchase those books; and it won't be
2 \$50 a piece. Maybe it'll be \$20 a piece. I'm
3 just making all of this up, of course.

4 Does that still go on? Or something
5 like that go on?

6 A. Something like that, but we don't run it
7 as a school. I think maybe the parents guild
8 sets up a day in, you know, mid July, once kids
9 know what the courses are that they're going to
10 be taking, that they set up in the parking lot if
11 you want to come sell books or buy books, they do
12 that in the -- through the --

13 Q. And does the school get any kind of an
14 override or fee for that?

15 A. No, no.

16 Q. Did it ever?

17 A. I have no idea. What we do as a school,
18 we provide an online book store that families can
19 purchase their books through that online book
20 store; and they can sell the books back at the
21 end of the year and get, you know, percentage of
22 the money back directly from that book store but
23 that's not --

24 Q. But the school does that function?

25 A. The school does that.

1 Q. So instead of taking your son's book, in
2 my example, to the parking lot, he can take it
3 now to the book store?

4 A. If you bought it from the MBS -- I think
5 is the name of it. If you bought it from that
6 online book store, then you can sell it back to
7 the online book store.

8 Q. And MBS is the school or some arm?

9 A. It's not us, no. It's a totally
10 separate entity that we contracted with, I guess,
11 is -- is the best way to put it.

12 Q. I'm sorry. I misunderstood you.

13 A. And we do, I think, get a percentage of
14 that. I don't know what it is.

15 Q. I want to ask you the same thing about
16 the uniforms. That's where I was going. One of
17 my children -- one of those plaid, you know.

18 A. Yeah. It's a collector's item, now, the
19 plaid so --

20 Q. They used to have to be bought from
21 Shades.

22 A. Shades, uh-huh, uh-huh.

23 Q. Well, let me ask you: What retains
24 about the uniforms? Do you have a similar
25 exchange method in the parking lot or somewhere

1 else?

2 A. Yeah. The same thing. The parents can
3 sell uniforms. A lot of times parents will just
4 bring back used uniforms. If their kids have
5 graduated, they'll return uniforms to us to keep
6 on hand if somebody comes to school and has
7 forgotten, you know, whatever they might forget.
8 We have, sort of, a holding area of some uniforms
9 we can pass out, if we need to.

10 Q. But that is not a profit center for the
11 school?

12 A. No, no.

13 Q. That's a service. If I can call it
14 that. It's a service.

15 A. Right.

16 Q. Now, I'm told -- I can't -- I don't know
17 this. I'm told this. That now the uniforms are
18 all handled no more at Shades. So now they're
19 handled by --

20 A. Stagecoach.

21 Q. -- Stagecoach. Right.

22 And what was the -- if you know, what
23 was the arrangement with Shades; and what's the
24 arrangement with Stagecoach?

25 A. Like do we get a percentage or

1 something?

2 Q. Override or something, some control.
3 Anything.

4 A. I have no idea what it was with Shades.
5 With Stagecoach, it's Bill Loon (phonetic) is the
6 owner of that; and he was a parent, and he had
7 this business and so -- and I don't remember the
8 year that Shades, you know, completely shut down,
9 quit doing it. But that's when Bill took it over
10 at Stagecoach. I don't know if he, you know,
11 gives us any sort of a percentage of that, those
12 sales. I have no idea.

13 Q. Would it show in the budget if --

14 A. I don't know. I really don't.

15 Q. That was an adventure going to Shades,
16 for whatever purpose, not just uniforms.

17 A. Uh-huh, uh-huh.

18 Q. That's a step back in time.

19 A. It certainly is, uh-huh.

20 Q. Now, does the school provide -- in an
21 appropriate situation, if a family needs
22 assistance, let's say, with the uniforms or with
23 the books or whatever, does the school make
24 provision for that?

25 A. I have -- I have personally called Bill

1 Loon myself to ask if he could -- if I sent a
2 family to him, if he could, you know, take care
3 of or send us the bill. And he actually is very
4 good about just taking care of whatever they
5 need.

6 Q. And I'm guessing that the book people
7 are less nice about that, but I don't know.

8 A. I don't know. Cindy says they're great.
9 Cindy Hart also deals with them with the MBS.

10 Q. I'll talk to her.

11 A. Uh-huh.

12 MR. DUKES: It's 2:20. Do you want
13 me to call Bryan Fahey and tell him to come
14 later?

15 MR. RICHTER: Come on.

16 MS. RICHTER: He's scheduled for
17 three. I think we'll be fine for three.

18 MR. RICHTER: Oh, we're fine for
19 three.

20 MR. DUKES: Okay. Then we'll let
21 it go.

22 MR. RICHTER: As Rich said
23 yesterday, he was going to take us Hall's
24 Steakhouse. He didn't take us to Hall's
25 Steakhouse, but he did say that or something like

1 that. All of us heard it.

2 MR. DUKES: I couldn't hear what
3 Larry was saying.

4 THE WITNESS: That you said you
5 were taking us to Hall's steakhouse.

6 MR. DUKES: Oh.

7 THE WITNESS: I think it's in the
8 record.

9 BY MR. RICHTER:

10 Q. What does the school do when a family
11 has whatever adverse occurrence which impacts
12 their financial ability, for example, to pay
13 tuition at the high school? Is there some
14 program or routine of either forgiving payment,
15 some alternate source of payment, or, you know,
16 some long-term payout method or anything like
17 that?

18 A. Honestly, I don't deal with any of
19 the -- the budgetary, tuition type things. So
20 that would really be a question for Patrick and
21 for Cindy.

22 Q. Okay.

23 A. It's just not my purview.

24 Q. I understand that. I just wondered.
25 I guess what I'm really wanting to ask,

1 I was trying to ask more gracefully. Does anyone
2 get turned away because they fall on hard
3 economic times through no fault of their own?
4 It's happened to a lot of people, you know, here
5 recently in history. That's what I was trying to
6 ask you.

7 A. And I don't know because -- just because
8 they don't come to me. They would go to Patrick
9 and then Cindy, and that's where that would go.

10 Q. And what does the school do about fund-
11 raising events? I'm assuming the school
12 conducts -- I know I went through 12 years of
13 parochial education. I know something about
14 selling lottery tickets and, you know, Bingos and
15 whatever. Paddlewheels.

16 Does it -- what does the school do about
17 fund-raising now?

18 A. That's, typically, handled by our
19 development office, also by our, like the parent
20 guild. They will do fund-raisers. Like we've
21 had a gala in the past.

22 Q. You've had what in the past?

23 A. A gala, a --

24 Q. A gala. I'm sorry. Missed the word.

25 A. The development office does, you know,

1 campaigns to raise money, you know, for
2 different -- whether it's tuition assistance or
3 what have you.

4 Q. Right.

5 A. That's -- is that what you're looking
6 for?

7 Q. Yes, just generally. I didn't know how
8 to form the question. Just looking for that
9 general information.

10 A. Right.

11 Q. I've got a view of my time and how
12 everything was done. It may be different than
13 how it's done now.

14 One thing we did in my time was we had
15 raffles and drawings and -- I don't remember the
16 names of all the -- games of chance is what it
17 was, and I just wondered if that still goes on.

18 A. The school doesn't do anything like
19 that.

20 Q. Does the school benefit from any of that
21 type of activity?

22 A. I'm not trying to be evasive, Larry; but
23 I don't -- I don't deal with any of that but --

24 Q. So you don't know whether --

25 A. I don't. I don't.

Deposition of Mary Anne Tucker

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1 Q. I understand.

2 MR. RICHTER: Y'all need anything
3 else?

4 Q. I'm going to hand you up a document that
5 is marked --

6 (Exhibit No. 01 was marked for
7 identification.)

8 Q. Did you have anything to do with the
9 prior class action matter which we settled with
10 the Diocese for \$12 million? Were you involved
11 in that in any way?

12 A. Not at all.

13 Q. Do you know of it?

14 A. I know of it minimally.

15 Q. Do you know why so many children are
16 sexually molested by priests in the Diocese of
17 Charleston?

18 A. I don't know -- have any answer to that,
19 no, no, sir.

20 Q. Well, I'm -- I started to say to you
21 count yourself lucky, but I'm not going to say
22 anything. You know about that.

23 Let me give you -- I hand to you now
24 what is marked the Plaintiff's Exhibit No. 01 to
25 your deposition; and it consists of Bates stamp

1 numbered pages 4469, 4470, and 4471. You'll see
2 those in the bottom right hand.

3 A. I do.

4 Q. This is a composite exhibit because it's
5 more than one page, referring to some different
6 event on the respective pages.

7 A. Right.

8 Q. I just want to make sure you are
9 familiar with these. And if you're not, please
10 take whatever time you need to familiarize
11 yourself; and then I'd like to just walk through
12 them with you. Ask you to walk me through them.

13 A. (Complies with request.)

14 MS. RICHTER: I think you misspoke.
15 You said it only goes through 71. It goes
16 through 72, I think.

17 MR. RICHTER: It does go through
18 72. So it's 469 -- through 4469 through 4472.

19 MS. RICHTER: What would y'all do
20 without me?

21 MR. DUKES: This doesn't have to be
22 on the record.

23 (Off-the-record discussion.)

24 BY MR. RICHTER:

25 Q. You set to go on?

Deposition of Mary Anne Tucker

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1 A. I am.

2 Q. Would you begin with page No. 4469,
3 please, of the Plaintiff's Exhibit No. 01 to your
4 deposition and tell us what this is?

5 A. We had a student who realized that his
6 wallet had gone missing from one of the locker
7 rooms at the school, and then one of our
8 maintenance workers said that he -- somebody had
9 given it to him; and so he, then, returned it to
10 the boy. And it was never determined who this
11 other child was that reportedly had the wallet.
12 If that person existed, we don't know.

13 Q. Yeah. Is it fair to assume there was no
14 money in the wallet when it came back?

15 A. I don't know. I really don't know.

16 Q. Well, why isn't there a date on this
17 thing? When did this happen?

18 A. It's Tuesday, August 28; but it was 2018
19 was the year that it happened, if that's -- is
20 that what you --

21 Q. Yeah, if you know that.

22 A. Uh-huh, it is.

23 Q. That's fine.

24 Who is the author of it?

25 A. Dean of Students, Julie Rosebrock.

Deposition of Mary Anne Tucker

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1 Q. Say her name again, please.

2 A. Julie Rosebrock.

3 Q. Julie Rosebrock. How do you know that?

4 There's no signature or initial or anything on
5 here.

6 A. Because when Rich asked me to get the --
7 any information on cases or incidents or whatever
8 in the lockers rooms, I knew that she had written
9 this. So I asked her to give it to me.

10 Q. And when was that in point of time?

11 A. When was -- when did I ask her to give
12 it to me?

13 Q. When did you ask her, yeah.

14 A. I'm going to say a month or so ago. I
15 don't know. I'd have to go back and look. I
16 think somewhere in that sort of a time frame.
17 Maybe a month. Maybe two.

18 Q. Let's go to 4470, please. I want to ask
19 you the same thing, if you can give us a quick
20 summary of what this is.

21 A. We have options students at Bishop
22 England that are special needs kids with, you
23 know, could be Downs Syndrome.

24 Q. I've heard of that program. I've heard
25 nice things of that program.

1 A. It's a fantastic program, and they
2 participate in a lot of our mainstream classes.
3 PE is one of them.

4 We got word that one of our options
5 students had been videoed in the locker room,
6 completely clothed, but videoed in the locker
7 room by another student rapping, you know.
8 Singing a song that had profane lyrics in it and,
9 in particular, the use of the "N" word.

10 And that video -- I think it was a
11 Snapchat video that he made of it and sent it to
12 somebody else. So word got back to us, and we
13 got involved from a disciplinary perspective.

14 Q. And was the -- was this a viewing case
15 of the student, or was this a misbehavior by
16 the --

17 A. No. Absolutely, it was misbehavior.
18 And he's an options student, and so there is --
19 the concern that, you know. He does know right
20 from wrong. So it's not a situation where he
21 doesn't know right from wrong. He knows that he
22 shouldn't be doing that.

23 But I think he was cajoled into it by
24 other students, and then the video of him singing
25 the song and using the "N" word was then sent to

1 other people; and I don't -- I don't know how.
2 It doesn't say in here.

3 But somehow one of our -- another one of
4 our maintenance workers -- I think it was maybe a
5 relative of hers that got the video, was one of
6 the ones on the receiving end of it who goes to a
7 different school. So she was the one that
8 brought it to us to show us, you know.

9 Q. Now, was the -- I'm going to say
10 perpetrator. I don't mean that as a sex abuse
11 perpetrator in this context. We talk a lot about
12 that.

13 Was the perpetrator, the guy who's
14 singing and dancing and jumping around, is he a
15 minority student or not?

16 A. No, he's not.

17 Q. And the options student, is that person
18 a minority student?

19 A. The options student is the perpetrator.
20 The options student is the one doing the singing,
21 and he was videoed doing the singing.

22 Q. I got you. Yeah. And same thing about
23 the date and the author of this page, please.

24 A. This was also Julie Rosebrock. This
25 would have been March 5 of 2020 because she's in

1 it, and she's written it. It's in third person.
2 I don't know. I know that I got this from Julie.
3 I'm assuming she's the one that wrote it. I've
4 done that myself as I refer to myself as
5 Mrs. Tucker as I wrote something up, but I can't
6 explain that.

7 Q. And that was figured out, and everybody
8 moved on?

9 A. Yes, yes, yes.

10 Q. Thank you. And page 71, please. 4471.

11 A. (Complies with request.)

12 Q. What is that one about?

13 A. This -- let me make sure before I say
14 this. This is the one that I wrote. So I'm the
15 author of this.

16 Q. It's a long one.

17 A. I'm rather verbose, and the date is
18 there in its entirety. This was a situation
19 that, again, another options student, different
20 PE class, obviously, it's a girls' PE class.

21 I guess at some point before the
22 beginning or the end of PE class when they were
23 changing clothes, the options student was
24 standing there in a sports bra and underpants;
25 and there were two other girls there.

1 One of the girls took a picture of the
2 options student who was standing there, you know,
3 in her bra and in her pants; and the other girl
4 was also in the picture, but that girl was
5 completely clothed and --

6 Q. The options student?

7 A. No. The options student was in the bra
8 and underpants. The other girl was completely
9 clothed. I think -- I don't know if in her PE
10 uniform or if she was, you know, in her skirt and
11 blouse.

12 And the girl that took the picture sent
13 it to the other girl, you know, digitally,
14 whatever. Sent it to the other girl, you know,
15 in effect making fun of the options student
16 because she's standing there having a
17 conversation in her bra and underpants when the
18 other girl was completely clothed.

19 So then the other girl who was the one
20 that was completely clothed, took that picture
21 and, you know, edited the photo with, like, a
22 green marker to, like, color over the options
23 student so you really couldn't see -- you really
24 couldn't see what she was wearing but, you know,
25 she definitely was not clothed and in uniform or

1 anything like that. And then captioned it.

2 I think the caption is in here. "Live,
3 love the Bishop life" and then "photo taken by."
4 So, in effect, what she was doing is she was
5 chastising the first girl for having taken the
6 picture to begin with, if that makes sense.

7 She was saying -- 'cause where she says,
8 "photo taken by whomever," she's fussing at
9 that -- that other girl for taking this picture
10 and making fun of the options student. I know
11 that's convoluted, but that's what was going on.

12 Q. So the options student was the victim of
13 this --

14 A. Uh-huh, uh-huh. She was not even aware
15 the picture was being taken, and certainly didn't
16 know she was being made fun of.

17 Q. And is that -- was that resolved in some
18 way?

19 A. It was. All that's in there.

20 Q. Okay.

21 A. Talking to the parents and the Diocese
22 and the whole shooting match.

23 Q. So let's do the last page, please.

24 A. (Complies with request.) That's the
25 same thing. That's the same case.

Deposition of Mary Anne Tucker

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1 Q. Oh, it's --

2 A. It's just the --

3 Q. Oh, it's just -- I see it.

4 Now, how many options students do y'all
5 have over there at Bishop England?

6 A. Typically, it's 16. Typically, it's
7 four per grade level. Right now one of the
8 classes only has two, and the freshman class has
9 five. So it may not be 16 right now, but it's --
10 generally speaking, it's a max of 16.

11 Q. How long have y'all -- has that existed?

12 A. I believe the year was 2007 when we
13 started that program.

14 Q. So it's an established program?

15 A. Uh-huh, it is.

16 Q. You are the one who wrote that "on first
17 view of this photo, the lady looks nude"?

18 A. Yes, uh-huh. Because when -- when -- I
19 guess it was the second girl colored over her
20 with green, you know. The sports bra was, sort
21 of, a flesh-colored sports bra so you really
22 couldn't see, you know, that there were straps.

23 And so you could see just flesh colored
24 and then -- but on closer inspection when you --
25 which you don't really want to do. But, you

1 know, when you get closer to it, you could see
2 that there was actual material there; and it was
3 not the same exact color of her skin. And so,
4 yeah, it was --

5 Q. We asked Mr. Finneran this. Let me just
6 ask the same question to you.

7 We asked him about persons, staff people
8 at Bishop England of one sex entering an office
9 with a viewing window of persons of another sex.
10 So men going into the female dressing room
11 office, coach office --

12 A. Right.

13 Q. -- area and vice versa. Women going
14 into the men's.

15 Is there a policy about that or any
16 prohibition about it?

17 A. No.

18 Q. And how frequently does that occur?
19 Does it occur, first?

20 A. Does, like, a male coach go into the
21 female PE coaches' office?

22 Q. Yes.

23 A. I don't know how often it happens. I'm
24 sure it does happens, but I don't have any idea
25 how often it happens.

1 Q. What about coaches bringing students
2 into their offices? Is there a policy about
3 that?

4 A. I mean, the policy is that all those
5 doors have windows. I mean, that's one of the
6 policies from the Diocese.

7 Q. From the hallway?

8 A. Uh-huh, yes, uh-huh. But nothing other
9 than that that I can think of.

10 Q. And to your knowledge, has there been
11 any difficulty involving students being
12 inappropriately touched, photographed, anything
13 else by adult staff members, other than the guy
14 you mentioned earlier?

15 A. Jeffrey Scofield?

16 Q. Yes.

17 A. None that -- none that I can think of.

18 MR. RICHTER: That's it. I think
19 we can quit.

20 MR. DUKES: I'd like her to read
21 and sign. I don't have any questions, obviously;
22 and I'd like her to read and sign, please.

23 (The deposition concluded at 2:44 p.m.)

24 - - -

25

1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF HORRY

4 I, Ronda K. Blanton, a Registered
5 Professional Reporter and Notary Public for the
6 State of South Carolina at Large, do hereby
7 certify that the witness in the foregoing
8 deposition was by me duly sworn to testify to the
9 truth, the whole truth, and nothing but the truth
10 in the within-entitled cause; that said
11 deposition was taken at the time and location
12 therein stated; that the testimony of the witness
13 and all objections made at the time of the
14 examination were recorded stenographically by me
15 and were thereafter transcribed by computer-aided
16 transcription; that the foregoing is a full,
17 complete, and true record of the testimony of the
18 witness and of all objections made at the time of
19 the examination; and that the witness was given
20 an opportunity to read and correct said
21 deposition and to subscribe the same.

22 Should the signature of the witness not be
23 affixed to the deposition, the witness shall not
24 have availed himself/herself of the opportunity
25 to sign or the signature has been waived.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal on October 15, 2021, at Myrtle
Beach, Horry County, South Carolina.

Ronda K. Blanton
NCRA REGISTERED PROFESSIONAL
REPORTER, RPR
Notary Public,
State of South Carolina at Large
My Commission expires:
May 15, 2028.

1 DEPONENT CORRECTION SHEET
2 I, the undersigned, MARY ANNE TUCKER, do hereby
3 certify that I have read the foregoing deposition
4 and wish to make the following clarifications
5 and/or corrections, if any.

4	PAGE	LINE	CHANGE	REASON
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20	MARY ANNE TUCKER	Date
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RB

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2:21-cv-00613-RMG Date Filed 12/13/21 Entry Number 67-2 Page 1 of 86

EXHIBIT 2

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE STATE OF SOUTH CAROLINA
3 CHARLESTON DIVISION

4 DEPOSITION OF ROGER M. ATTANASIO
5 30(b)(6) LS3P ARCHITECTS
6 VOLUME 2

7 AUGUST 20, 2021

8 GARY NESTLER, VIEWED STUDENT FEMALE 200, VIEWED
9 STUDENT MALE 300, on behalf of themselves and all
10 others similarly situated,

11 Plaintiffs,

12 vs. CASE NO. 2:21-cv-0613-RMG

13 THE BISHOP OF CHARLESTON, A CORPORATION SOLE;
14 BISHOP ENGLAND HIGH SCHOOL; TORTFEASORS 1-10; THE
15 BISHOP OF THE DIOCESE OF CHARLESTON, in his
16 official capacity; and ROBERT GUGLIELMONE,
17 Individually,

18 Defendants.
19

20 TIME: 9:44 AM

21 LOCATION: RICHTER LAW FIRM
22 MOUNT PLEASANT, SOUTH CAROLINA

23 REPORTED BY: RONDA K. BLANTON, RPR
24 CLARK & ASSOCIATES, INC.
25 CHARLESTON, SC 29422
843-762-6294
WWW.CLARK-ASSOCIATES.COM

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2 ON BEHALF OF THE PLAINTIFFS:

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9 HALVERSEN & ASSOCIATES
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11 ON BEHALF OF THE DEFENDANTS THE BISHOP OF
12 CHARLESTON, BISHOP ENGLAND HIGH SCHOOL, THE
BISHOP OF THE DIOCESE OF CHARLESTON, AND ROBERT
13 GUGLIELMONE:

14 TURNER PADGET GRAHAM & LANEY
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16 ON BEHALF OF LS3P AND THE WITNESS:

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18 BY: KENT STAIR, ESQ.
40 Calhoun Street, Suite 400
19 Charleston, SC 29401

20 - - -

21

22

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1 ROGER M. ATTANASIO,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MR. RICHTER:

6 Q. Would you state your name fully, please,
7 again, into the record.

8 A. Roger Michael Attanasio.

9 Q. Attanasio. I'll try to say it right,
10 but I can't promise anything.

11 MR. STAIR: Before he begins, can
12 we have a conversation with him out of the room?

13 MR. RICHTER: With --

14 MR. STAIR: I mean, on the record.
15 I want to be on the record, but I'm happy to
16 invite him out. He can stay. Either way.

17 MR. RICHTER: In other words, you
18 want him to step out?

19 MR. STAIR: I think it would be
20 appropriate.

21 MR. RICHTER: Yeah, that's fine.

22 (Witness departs the conference room at
23 9:44 a.m.)

24 MR. STAIR: Look, I just wanted to
25 note, in accordance with the local rules, that

1 there were a series of conversations that we had
2 with Mr. Attanasio the day of the deposition
3 where after the record --

4 MR. RICHTER: Wait a minute. Who's
5 "we"?

6 MR. STAIR: John Works and I. I
7 wrote you an email about it.

8 MR. RICHTER: You did.

9 MR. STAIR: Right.

10 MR. RICHTER: And I said I
11 object --

12 MR. STAIR: Right.

13 MR. RICHTER: -- to that email
14 being a part of this record, either -- so that
15 you're completely clear -- either by attachment
16 to the record, as you asked, or by your stating
17 the contents of that email that I object to in
18 the record.

19 MR. STAIR: All right.

20 MR. RICHTER: That's you
21 testifying, not somebody else.

22 MR. STAIR: Okay. All right.

23 And --

24 MR. RICHTER: But now you want to
25 do that?

1 MR. STAIR: No. According to the
2 local rule, it says, "The party having the
3 conversation should note it on the record"; and I
4 want to note it on the record. It says, "The
5 purpose and the outcome of the conference shall
6 be noted on the record."

7 The purpose, as I stated in the
8 email that I'm certainly not going to repeat
9 subject to your concerns and thoughts in
10 accordance with them; but I will tell you the
11 purpose was to advise him that we could not speak
12 and explain the rules to him as to why we could
13 not speak. And the outcome is that we have not
14 spoken about substance or any subject matter of
15 the deposition so --

16 MR. RICHTER: Yeah. And I
17 acknowledge getting such an email from you.

18 MR. STAIR: Okay. That's fine. I
19 just want to note that on the record and so --

20 MR. RICHTER: I thank you. I thank
21 you for writing.

22 I also -- while we're putting
23 things on the record by way of note, I think it
24 was -- I don't remember what time; but I think it
25 was on Wednesday, you sent us some additional

1 documentation and -- you sent a long email --

2 MR. STAIR: Right.

3 MR. RICHTER: -- and you sent some
4 additional documentation --

5 MR. STAIR: Right.

6 MR. RICHTER: -- including a couple
7 of additional disks of information.

8 Yesterday I was in court -- we
9 weren't in court for a very long time, although
10 we prepared all week long to be in court for at
11 least a day, a half a day at least. In any
12 event, Anna and I both were in court and out of
13 here. I'm not sure what court you had -- you had
14 a --

15 MR. SLOTCHIVER: I had court in the
16 morning and then depositions in the afternoon.

17 MR. RICHTER: And, Brent, you had
18 some conflict.

19 MR. SLOTCHIVER: Right. He was
20 with me on both of those cases.

21 MR. RICHTER: So in terms of
22 looking at those discovery documents -- and I
23 don't know that it's acceptable -- if it is
24 acceptable to the six-word explanation that you
25 did there, just so everybody -- I sent everybody,

1 you know, a copy of everything; but none of us
2 have read any of it because we haven't been able
3 to read it.

4 MR. STAIR: Okay.

5 MR. RICHTER: Is it -- can you --
6 can you, by some condensed statement, say,
7 "Here's what is in it," what you understand?

8 MR. STAIR: Well, I think I tried
9 to do that in the deposition.

10 MR. RICHTER: You did in the
11 letter.

12 MR. STAIR: In the email. And,
13 frankly, I don't have that email in front of me.
14 I don't have it, but I will tell you what I
15 recall. If somebody's got the email --

16 MR. RICHTER: I do.

17 MS. RICHTER: Do we?

18 MR. RICHTER: Yeah. It's the
19 one --

20 MR. STAIR: I know that two or
21 three of them -- okay. Tell me how I describe
22 it, and I'll tell you what they are. I know that
23 a couple of them are some electrical drawings
24 that have nothing at all --

25 MR. RICHTER: This is the email

1 you're referring to. (Indicating.)

2 MR. STAIR: As they say, refresh my
3 recollection. One second.

4 We had sent you, in response to
5 your subpoena, a set of plans that we -- well,
6 actually they were all of the plans that we had
7 in our possession; and so we wanted you to have
8 those. And we've discovered that there were two
9 sheets that somehow, I think, were not scanned
10 and sent for reasons I have no reason why; but we
11 discovered that.

12 And they appear to relate to
13 electrical issues and I don't think have anything
14 whatsoever to do with this case, but I just
15 attached them just to make the production of our
16 plans as complete as we could.

17 And then the second item was, we
18 came across three disks that contain
19 specifications that we found; and we think they
20 are the same specifications. We have no reason
21 to believe they're not the same specifications
22 that we had previously presented and that you've
23 otherwise, I think, seen through probably the
24 production of the subpoena.

25 But -- and I think you've had them

1 in multiple ways, but we just wanted to make sure
2 there was no oversights; and since we found these
3 disks, we included them. So I don't think they
4 are anything that either relates to the issues
5 involved or is not redundant to what we had
6 already produced. So you didn't miss much.

7 MR. RICHTER: Well, thank you.
8 Sounds like scintillating reading. Can't wait
9 for the weekend.

10 MR. STAIR: Yeah.

11 MR. RICHTER: And I will look at
12 all of that this weekend.

13 Let me just for now say that in the
14 event that I have a different view of the
15 documents than you, I'm going to reserve my right
16 to ask the Court to let us come back and deal
17 with -- be back here again. I'm not looking to
18 do that.

19 MR. STAIR: If you can find
20 anything that's new and different in those, I'll
21 either be impressed or concerned for your sanity,
22 one or the other; but let me know if you do find
23 that to be the case.

24 Larry, on the issue of objections,
25 I know that, obviously, there's been quite the

1 discussion and dispute and debate over that. I'm
2 going to continue to object to issues that are
3 what I consider to be outside the scope of the
4 six items that we indicated we were going to
5 testify about.

6 And I'm happy to just say
7 "objection" if you agree that within that
8 objection is stated the basis as being scope, but
9 the rules require me to state the objection but
10 also the basis of it. And so if scope is the
11 basis, I'm happy to say "objection scope." Or if
12 we can agree to shorten the thing and stay out of
13 the way as much as possible, I'm happy to just
14 say "objection." Your preference on that.

15 MR. RICHTER: My preference is that
16 I don't have any right to change the rule. So
17 say whatever you want to say on your objections.

18 MR. STAIR: Right.

19 MR. RICHTER: Is that it?

20 MR. STAIR: Yeah. And I -- I will
21 say I intend to tell him that he needs to answer
22 the question subject to my objections so we
23 should not have the issue we had last time.
24 So --

25 MR. HALVERSEN: I would just say

1 for the record -- and this is Brent Halversen,
2 for the record -- that any comment that's
3 suggesting what the deponent is going to be
4 answering, how to answer it, whether that's scope
5 or foundation, or what whatever commentary, I
6 think an objection to the form is the substance
7 of the rule and the purpose of the rule so --

8 MR. STAIR: Okay. Well, if we --

9 MR. HALVERSEN: You can explain it
10 as scope later on.

11 MR. STAIR: Okay. If you're
12 satisfied that scope is within the objection
13 statement to the form, then I'll just say
14 "objection to the form."

15 MR. HALVERSEN: However you want to
16 rephrase or recast what's the purpose of your
17 objection. I don't think you have to state. I
18 think "object to the form" covers you for
19 everything.

20 MR. STAIR: Okay. So you want me
21 to say "objection to the form" or just
22 "objection"?

23 MR. HALVERSEN: I think "object to
24 the form."

25 MR. STAIR: Okay. That's fine.

1 I'll just say "object to the form" then, and that
2 will include the issues that I have concerning
3 scope.

4 MR. HALVERSEN: Do you agree with
5 that Larry?

6 MR. RICHTER: I don't mind that. I
7 want to do it the easiest way.

8 MR. STAIR: Yeah, that's why
9 "objection" to me is easier than "objection to
10 the form." And I'm happy to say it either way as
11 long as we understand that the essence of it is
12 certainly going to be the scope so --

13 MR. RICHTER: One of the things
14 that does concern me about utilizing that method
15 that you described, Brent, is should we end up,
16 for example, back before the Court on these kinds
17 of issues, again, this leaves you in a position
18 to say, "Well, as to that objection, I didn't
19 mean scope." I didn't say --

20 MR. STAIR: Well, I considered that
21 and don't want to put you there. So I'm happy to
22 say just "objection"; and then if it is something
23 other than the form and whatever the form might
24 be, or scope as it relates to that topic. If
25 it's something else like -- that's not either

1 form or scope, I'm happy to add that on --

2 MR. RICHTER: Okay.

3 MR. STAIR: -- if that's all right.

4 MR. RICHTER: What does "form"

5 mean?

6 MR. STAIR: Well, you know, leading
7 I guess. Maybe it's got assumptions in it or
8 something. I don't know. You know, you have
9 more experience on the bench than I do. I'll
10 advise you to tell me.

11 MR. DUKES: Well, Larry, given the
12 confusing nature of so many of your questions, it
13 could really just be the form.

14 MR. STAIR: The form, right.

15 MR. RICHTER: Rich and I have done
16 so many of these now, he's got those little
17 cards, like the fans you use in church. You hold
18 it up. That's a 13. This one's a 4.

19 MR. DUKES: Well, you don't know
20 that I'm playing Larry Richter Bingo over here.
21 I'm going to stand up and go "Bingo."

22 MR. STAIR: I have the right of
23 dissertation on what "objection to the form"
24 really accomplishes. But anyway, I'm happy to
25 say and however you guys want to do it. I want

1 to do it like you say, as simple as --

2 MR. RICHTER: Well, I want to get
3 the question right. So probably it helps me best
4 if a question is defective for you to say
5 whatever you're going to say. I object because
6 you left half of the facts out or whatever it is.
7 And if I did that, of course, I'll put -- I don't
8 mean to do that. I'll put the facts in. So
9 let's do it that way.

10 MR. STAIR: Okay. So if I just say
11 "objection," it will include scope just by saying
12 "objection." But if I have something different
13 than scope to say, to let you know that.

14 MR. RICHTER: That's --

15 MR. DUKES: Of course, if you need
16 explanation of an objection, ask the witness to
17 step out and then put it on the record and
18 correct it. That's bulky and it takes forever,
19 but that's one solution.

20 MR. RICHTER: Oh, I know. I don't
21 really care, Kent. You're saying that every time
22 you say "objection" that you include in that
23 scope, and that's fine.

24 MR. STAIR: That's okay with you?

25 MR. RICHTER: That's the ground

1 rule.

2 MR. STAIR: Okay. Then that's
3 fine; and if I have some other particular bone to
4 pick with it, I'll wave a hand and say something.

5 MR. RICHTER: I'm just going to
6 wave him in.

7 (Witness is returned to the conference
8 room at 9:55 a.m.)

9 (Exhibit No. 05 and Exhibit No. 06 were
10 marked for identification.)

11 BY MR. RICHTER:

12 Q. Okay. Let's begin.

13 Sorry to ask you this, but would you
14 mind telling me again your preferred
15 pronunciation of your last name?

16 A. Attanasio.

17 Q. Attanasio. Okay. Long A.

18 I'm going to ask you if you're aware
19 that, subject to your last deposition, we went to
20 court and had a proceeding. We had a court
21 proceeding. We didn't have to travel to do it.
22 In which Judge Gergel has required that you come
23 back here and that we resume the deposition and
24 push on today.

25 You're aware of that?

1 A. I was not.

2 Q. You were not aware of that?

3 MR. RICHTER: Okay. Well, I'm
4 going to put into the record -- a part of the
5 record in this case -- by "record" I mean the
6 Court and public record indicates what is marked
7 as No. 05 and No. 06 being the order originally
8 and the amended order, which properly identifies
9 LS3P, as I'm remembering in the amended order.

10 Anybody have any trouble with
11 these? Any objections?

12 Okay. No. 05 and No. 06 is in.

13 Q. Well, I'm going to give you
14 Judge Gergel's order --

15 MR. STAIR: Larry, let me say,
16 before we begin, I'd like to step out and discuss
17 this with the witness. He's not seen it; and
18 under the local rules, I'm entitled to do that.

19 MR. RICHTER: Has not seen what?
20 These orders?

21 MR. STAIR: These records, right.
22 And there was no notification to him or us that
23 they'd be shown and so --

24 Q. Yeah. I'm going to -- we're going to
25 spend some time with you reading every word of

1 this so you can testify about it.

2 A. I'm sorry. Will you repeat that?

3 Q. Yes. We're going to -- Mr. Stair wants
4 to take a break to get with you to tell you what
5 these orders are. If you haven't seen these, I'm
6 amazed.

7 MR. STAIR: He's not.

8 Q. But you have the right to see them,
9 certainly.

10 MR. STAIR: Larry, we have
11 judiciously followed the rules about no
12 discussion about what has happened since. That's
13 why he's not seen them.

14 MR. RICHTER: I understand. I
15 read -- you sent me an email about that.

16 MR. STAIR: Yeah. But, I mean, we
17 have not shown him this or any other thing like
18 this.

19 Roger, if you would come here,
20 please.

21 (A recess was taken 10:00 a.m. to 10:11 a.m.)

22 MR. RICHTER: Back on the record,
23 Madam Reporter.

24

25 BY MR. RICHTER:

1 Q. Are you now set to go forward?

2 A. Yes, sir.

3 Q. Thank you.

4 Now, I'd like to make sure I understand
5 what you said just before you left the room. I
6 asked you had you seen No. 05 or number --
7 Exhibits No. 05 or No. 06.

8 And were you aware that you were
9 required to come back here today? And you said,
10 no, you were not aware of that.

11 Do you recall that?

12 A. I do.

13 Q. Why are you here?

14 A. Because I was asked to come back.

15 Q. By whom?

16 A. Mr. Stair.

17 Q. Did he say why?

18 A. No. Because when I left, you told me,
19 "You'll be back."

20 Q. Yeah. Welcome back.

21 A. Thank you.

22 Q. I'd like to -- whether your lawyers have
23 a copy, let me give you this copy. I'm going to
24 hand you Exhibits No. 05 and No. 06 to your
25 deposition. You'll see one is titled "Order and

1 Opinion." The second one is titled "Amended
2 Order and Opinion."

3 I'll tell you -- and I think everybody
4 will join me in saying this to you -- that the
5 only amendment is that, I think, a clerical error
6 in the first order. The judge who issued it,
7 Judge Richard Gergel, referred to LS3P as being a
8 party. LS3P was not then a party. Really still
9 today is not a party.

10 And so he amended the order, I think,
11 only making that change to say -- to not name
12 them as a party 'cause they weren't. They
13 were -- you were here as a witness. You weren't
14 here as a representative of a party in the
15 litigation at that time.

16 So that being said, let me hand them
17 both to you; and I need to ask you before I ask
18 substantive questions about these -- and I'm
19 going to. I need to ask you if you discussed
20 your testimony with your lawyer during this
21 break?

22 A. I did not.

23 Q. Did you get a chance to read these
24 orders that you've never seen before?

25 A. I have not.

1 Q. Well, you probably need to. You want to
2 read them now, you're certainly welcome to. You
3 don't know what these orders said about you?

4 A. I do not.

5 Q. You ought to read them.

6 MR. STAIR: Can he just read the
7 amended order since the --

8 MR. RICHTER: Yeah, yeah. And he
9 doesn't have to read anything, if he doesn't want
10 to.

11 MR. STAIR: Yeah. Take the time to
12 read No. 06, which is the amended order, which is
13 the final order.

14 MR. RICHTER: I might can help a
15 little time wise with that, Kent. If I can just
16 see my highlighted --

17 MR. STAIR: Probably just be good
18 for him to read the whole thing.

19 MR. RICHTER: Yeah. Fine with me.

20 MR. STAIR: Read it just top to
21 bottom.

22 THE WITNESS: (Complies with
23 request.)

24 MR. RICHTER: Kent, your client,
25 the witness, lives in North Carolina. So he

1 already knows this. You may, just from having
2 read and heard and observed. He knows what a
3 four-corners offense is. It's a clock-killing
4 device, and I'm sure you would not do that; but
5 let me just -- so let me be completely clear as
6 to the futility of that effort, if that's what
7 you have in mind ever. A four-corners offense
8 won't work here. Just letting you know.

9 MR. STAIR: I am bothered by that
10 suggestion because, I can assure you, it's not
11 true. You've handed the witness a document.

12 THE WITNESS: May I step out and
13 read this outside? Because the conversation
14 you're carrying on is disturbing me from reading
15 it.

16 MR. RICHTER: Yeah. I can give
17 you -- I can actually give you a room, if you'd
18 like a room --

19 THE WITNESS: That would be fine,
20 yes, sir.

21 MR. RICHTER: -- With a door on it.

22 BY MR. RICHTER:

23 Q. Before you go, let me ask you this: You
24 arrived for a good ten minutes with Mr. Stair;
25 and you didn't discuss your testimony, you've

1 said now under oath, you didn't discuss your
2 testimony. And you said under oath you didn't
3 see these orders during that ten -- what did
4 y'all talk about?

5 MR. STAIR: No, no. He didn't say
6 he didn't see the orders during those ten
7 minutes. He said he hadn't seen it beforehand,
8 and I objected to your asking him -- I object to
9 your asking him what we discussed, the substance
10 of our conversation out there; and I object to
11 you asking him that.

12 MS. RICHTER: "Did you get a chance
13 to review the orders that you've never seen
14 before." "I have not." (Indicating.)

15 Q. Do you remember testifying to that just
16 a few moments ago?

17 A. Yes, I do.

18 Q. That doesn't change because Mr. Stair
19 says you didn't say that. That's his matter to
20 explain to whoever he needs to explain it. The
21 truth is: You said that. And you remember that,
22 don't you?

23 A. Yes, sir.

24 Q. Yeah. If you need a room or whatever
25 you need, it's 10:20 now; and I'll get you in

1 someplace.

2 (Witness departs the conference room at
3 10:17 p.m.)

4 MR. STAIR: May I continue on with
5 what I was saying? This is not --

6 MR. RICHTER: If it's truthful, go
7 ahead. If it's not, don't go ahead.

8 MR. STAIR: Larry, don't say those
9 kinds of things.

10 MR. RICHTER: You said that he
11 didn't say that, and it's in the --

12 MR. STAIR: Larry, it's quite clear
13 he was talking about before you showed them to
14 him.

15 MR. RICHTER: That's not -- that's
16 as inaccurate as what you said before.

17 MR. STAIR: Okay.

18 MR. RICHTER: But that's fine.

19 MR. STAIR: I'm not going to sit
20 and argue with you. This is not a four-corners
21 offense. You asked him to read it. He's reading
22 it.

23 MR. RICHTER: I'm really most
24 anxious to know why somebody who is named in
25 an -- why would you keep somebody whose named --

1 this is not examination. We're just talking.

2 Why would you keep from a client
3 who was found to have violated the rules the
4 order that says he violated the rules?

5 MR. STAIR: I can assure you the
6 client saw it.

7 MR. RICHTER: This guy's not your
8 client?

9 MR. STAIR: He is the 30(b)(6)
10 witness; and because of his deposition being
11 pending, as I told you, we've not talked about
12 it -- his testimony or this order with him. I
13 think that is a following of the rule, and that's
14 what we intended to do.

15 MR. RICHTER: Good. Maybe you can
16 sell that. I'm just going to sit here and reread
17 these lines then.

18 MR. STAIR: Okay.

19 (Witness returns to the conference room
20 at 10:27 a.m.)

21 BY MR. RICHTER:

22 Q. Now that you've had an opportunity to
23 read the order of Judge Gergel -- the amended
24 order of Judge Gergel and familiarize yourself
25 with it, is this the first time you've seen that?

1 A. Yes, sir. May I say there's a mistake
2 in it?

3 Q. A mistake in the order?

4 A. Uh-huh. In the amended order.

5 Q. I don't know. I don't know if there is
6 or not.

7 A. I do.

8 Q. Okay. If you want to criticize him,
9 sure.

10 A. My name is not Roger A. Attanasio. My
11 name is Roger M. Attanasio.

12 Q. Okay.

13 A. On page 4.

14 Q. Let me just catch up with you.

15 A. Third line.

16 Q. I see it. Yeah. It says A. Okay.
17 What did it say in the original one?

18 A. Same thing.

19 Q. Same error?

20 A. (Nods head.)

21 Q. Well, are you saying you would like that
22 called to the judge's attention or not? Or do
23 you want me to do something about that?

24 A. No, sir.

25 Q. Well, here's what I -- I don't want

1 to -- did you have --

2 (Off-the-record discussion was held.)

3 Q. During the first break that you and
4 Mr. Stair utilized out of the room, as you just
5 heard, the reporter calculated the time; and it
6 was 11 minutes. And you said a while ago -- I
7 just want to make sure we get this straight for
8 the record.

9 You said a while ago that you didn't
10 discuss your testimony with Mr. Stair at that
11 time, didn't you?

12 A. Yes.

13 Q. And that you didn't see this
14 Judge Gergel's order until I put it before you in
15 here as Exhibits No. 05 and No. 06; isn't that
16 correct?

17 A. Yes, sir.

18 Q. So you didn't see it during that
19 11-minute break?

20 A. Mr. Stair was holding it; and I could
21 see Mr. Stair was holding it, but I did not read
22 it.

23 Q. Did you know what it was?

24 A. The order 'cause you said it was the
25 amended order.

1 Q. No. No. No. How did you know what it
2 was that Mr. Stair was holding?

3 A. Because he said it was the amended
4 order.

5 Q. And did you ask, "What does it say?"

6 A. Mr. Stair gave me his interpretation of
7 what it said.

8 Q. And did you -- now you've read it. Did
9 you interpret the order the same way that
10 Mr. Stair interpreted it?

11 A. Yes.

12 Q. And do you interpret that order as
13 finding that you violated the Federal Rules of
14 Civil Procedure?

15 MR. STAIR: Objection to form.

16 MR. DUKES: Same objection.

17 A. Yes.

18 Q. Did Mr. Stair explain that to you or did
19 you learn that from reading the order itself?

20 MR. STAIR: Object to the form.

21 A. Reading.

22 Q. So you've never been told before you
23 read the order that you have been found by the
24 Federal Court in Charleston, South Carolina, to
25 have violated the Rules of Civil Procedure and

1 that you must now come back and comply with those
2 rules and comply with the rules of the
3 deposition?

4 MR. STAIR: Object to the form.

5 A. Correct.

6 Q. What did you think about that?

7 MR. STAIR: Object.

8 MR. DUKES: Same objection.

9 A. I don't have any thoughts about it.

10 Q. Now, I'd like to call your attention in
11 that order -- because I want to make sure you
12 understand this, and you'll see why in just a
13 minute. I'd like to call your attention,
14 please -- I'd like to call your attention,
15 please, to page 6.

16 A. (Complies with request.)

17 Q. Are you up with me? This on the Amended
18 Order and Opinion of the Honorable Richard Gergel
19 dated August 9, 2021. We're looking at the same
20 thing?

21 A. Yes, sir.

22 Q. Thank you.

23 Do you -- did you read the following
24 language in the first full paragraph -- beginning
25 in the first full paragraph -- well, beginning

1 with the first full paragraph, "The Court further
2 denies LS3P's requests to terminate the Rule
3 30(b)(6) deposition of LS3P and, instead, orders
4 that said disposition be reconvened."

5 Do you understand that that is what has
6 brought us back together?

7 MR. STAIR: I think you meant to
8 say "deposition."

9 Q. Said deposition to be reconvened. Do
10 you understand that's what -- that order is what
11 has brought us back together here today?

12 A. Yes.

13 Q. It goes on in that same paragraph, "The
14 Court has reviewed the entire transcript of
15 LS3P's deposition."

16 Do you understand that that means the
17 judge sat down and read every question and every
18 answer and every objection that was made at your
19 first appearance here?

20 A. Yes, sir.

21 Q. "The Court finds problematic the conduct
22 of LS3P's representative Attanasio." You say
23 Attanasio, don't you, because you -- I remember
24 the long vowel.

25 "The Court finds problematic the conduct

1 of LS3P's representative Attanasio and, to a
2 lesser degree, LS3P's counsel?"

3 Do you understand that that says that
4 you were worse even than your counsel was?

5 MR. DUKES: Object to the form.

6 MR. STAIR: Object to the form.

7 Q. Do you understand that that says that
8 your behavior at the deposition was even worse
9 than that of your lawyer, Mr. Stair?

10 MR. STAIR: Object to the form.

11 A. I read it to say that it finds my -- it
12 finds problematic my conduct, yes, sir.

13 Q. And it goes on to say too, "and to a
14 lesser degree, LS3P's counsel." That's
15 Mr. Stair; right?

16 A. Yes, sir.

17 Q. That's just like saying, but he wasn't
18 as bad as Mr. -- but Mr. Stair wasn't as bad as
19 you were --

20 MR. STAIR: Object to the form.

21 Q. -- in his offensive activities.

22 MR. STAIR: Object to the form.

23 MR. DUKES: Same objection.

24 Q. Do you understand that or not?

25 A. I understand the Court finds Mr. Stair's

1 conduct less problematic than mine, yes, sir.

2 Q. And do you agree with that assessment?

3 MR. STAIR: Object to the form.

4 MR. DUKES: Same objection.

5 A. Do I agree with that assessment? I
6 mean, the judge is entitled to his opinion.

7 Q. I'm just asking what your opinion is.
8 Do you agree with his assessment?

9 A. No.

10 Q. You think Mr. Stair was more violative
11 of the rules than you were?

12 A. No.

13 MR. STAIR: Object.

14 Q. Well, what is it that you think? If the
15 judge was wrong in saying what he said here, I
16 want to understand what he said is wrong, in your
17 opinion.

18 MR. STAIR: Object.

19 MR. DUKES: Object to the form.

20 A. Well, first, I didn't understand I was
21 violating any rules. Okay. So I -- I didn't
22 understand that when I left here. I came to
23 speak about three items: Planning, design, and
24 building.

25 And that's what I thought this -- you

1 were limited to asking me questions about. So
2 that's why I answered the way I answered in the
3 manner that I answered. I didn't know I was
4 violating any rule.

5 The judge has said I violated a rule,
6 and my conduct was problematic. I now have an
7 opportunity to correct that conduct. That's what
8 I believe. The judge is entitled to say what the
9 judge wants to say.

10 Q. But you disagree with it.

11 MR. STAIR: Object to the form.

12 Q. And I'm trying to understand what it is
13 that he has said in that sentence. The Court
14 finds problematic conduct of you and, to a lesser
15 degree, LS3P's counsel, which would be Mr. Stair;
16 and you said you disagree with that. I'm trying
17 to understand what it is that you disagree --

18 A. I don't know what the rule means and how
19 that is interpreted. So I can't have an opinion
20 on whether or not the judge is correct, the judge
21 is not correct. I mean, if I violated the
22 conduct, I will correct my conduct.

23 Q. Now, we went to the next sentence, which
24 says, "The Court has reviewed the entire
25 transcript of LS3P's deposition." I think I

1 asked you, do you understand that means he
2 literally sat down and read every question, every
3 answer, every objection in the transcript of that
4 deposition.

5 Do you understand that?

6 A. Yes, sir.

7 Q. Next sentence, contrary to plaintiff's
8 characterization otherwise, you, sir, did respond
9 to most questions of the plaintiff. And then he
10 goes -- you'll see at the bottom. I don't want
11 to take the time to go through all the
12 illustrations that he makes in that footnote.

13 But you see the footnote down there, a
14 good size footnote. Text says, "Problematically,
15 however, Attanasio often answered questions only
16 after stating that he believed" -- and you notice
17 that's in italics. "He" is emphasized. He
18 believed a question was, quote, outside the scope
19 of Plaintiff's 30(b)(6) notice.

20 Do you understand what he's saying
21 there?

22 A. Yes, sir.

23 Q. You did that, didn't you?

24 A. I did.

25 Q. And you don't -- if I remember your

1 testimony, you didn't have any legal training to
2 base that on whatsoever, did you?

3 A. That's correct.

4 Q. And next sentence says, "Plaintiffs
5 argue that Attanasio testified in this manner at
6 the prompting of LS3P's counsel." That would be
7 Mr. Stair. "Who frequently objected to scope."

8 Do you understand what that means?

9 A. I believe I understood what the judge
10 was trying to say, yes, sir.

11 Q. Well, what do you think he was trying to
12 say there?

13 A. I think the judge is saying that I
14 answered in the manner that it was outside the
15 scope because Mr. Stair frequently objected to
16 the scope of the question.

17 I don't find that to be accurate.
18 That's not why I did what I did. Mr. Stair
19 didn't encourage me to answer or not answer a
20 question. He just said, "Object to the form."

21 Q. Well, that's not what he said, is it?

22 A. That's what I recall Mr. Stair saying.

23 Q. You're under oath today. You say what
24 you think you --

25 A. I recall Mr. Stair -- when you asked a

1 question, Mr. Stair would say, "Object to the
2 form."

3 Q. Would you like to see the transcript of
4 that deposition?

5 A. No, sir, I do not.

6 Q. I've counted the questions and read it
7 over and over, and Judge Gergel has read it.
8 Let's go down to the footnote. Then we'll come
9 back up to the body. Footnote said -- I didn't
10 want to have to take the time to do.

11 The Court notes, the footnote says,
12 Footnote No. 1 on page 6 that "as LS3P's counsel
13 objected to various topics as outside the
14 scope" -- and he quotes it, that word "scope,"
15 "of plaintiff's notice despite the fact that
16 these subjects were clearly proper."

17 Do you understand that the Court finds
18 that the objections Mr. Stair made were to
19 questions that were clearly proper questions? Do
20 you understand that?

21 MR. STAIR: Object to the form.

22 A. I understand what this says, yes, sir.

23 Q. Yeah. And it doesn't say, "I object to
24 the form of the question," does it? It quotes
25 the word "scope," doesn't it?

1 A. Excuse me? Say that again.

2 Q. This footnote -- you testified under
3 oath one minute ago that Mr. Stair objected to
4 the form of the question. And I said, "That's
5 not what he did, is it?" And you said, "Well,
6 yes, it is." And I said, "You want to read the
7 deposition?" I've got all the questions. All
8 the answers. I got them lined out. Got tabs on
9 each one, and I've got even calculation of how
10 many there were and the time that was expended on
11 doing all of that.

12 If you want to read all that, I can make
13 it available to you. All I'm trying to get you
14 to do here with this last question --

15 MR. DUKES: This is off the record.

16 (Off-the-record discussion.)

17 BY MR. RICHTER:

18 Q. In other words, the Court found here
19 that the questions I was posing -- I think he
20 said in many instances, the subjects were clearly
21 proper is what he said.

22 And you understand that to mean, I take
23 it, I think what you said is: Judge Gergel could
24 say what he wants to say, or he can think what he
25 wants to think.

1 Was that your response or not?

2 MR. STAIR: Object to the form.

3 MR. DUKES: Same objection.

4 A. I don't recall exactly what I said,
5 Mr. Richter.

6 Q. And he cites as an example in brackets
7 at the end of the third sentence of the footnote,
8 objecting to the question of whether LS3P, quote,
9 knew and drew the plan for construction of the
10 school, that on one side of that window would be
11 children in various states of dress.

12 Do you understand what the -- what that
13 reference is to?

14 MR. STAIR: Object to the form.

15 A. Yes, sir.

16 Q. Now, let's go back to the place where
17 Footnote 1 is shown on page 6 in the body of
18 Judge Gergel's order because I want to ask you
19 what you understand the following to mean.

20 A. (Complies with request.)

21 Q. It -- well, the sentence before that.
22 "The plaintiffs argue that Mr. Attanasio
23 testified in this manner at the prompting of
24 LS3P's counsel, who frequently objected as to
25 scope." Then there's Footnote 1, and then

1 there's several examples of Footnote 1 of
2 Mr. Stair objecting about scope.

3 Do you recall -- I mean, do you agree
4 with that characterization?

5 MR. STAIR: Object to the form.

6 A. I agree that's what this states, yes,
7 sir.

8 Q. Do you agree with the characterization
9 that that's what the footnote says?

10 A. Yes, sir.

11 Q. And do you agree that, in fact, that's
12 what happened?

13 MR. STAIR: Object to the form.

14 A. Without -- without reading the entire
15 deposition, I can't say for sure yes or no. But
16 if that's what it says, that's what it says.

17 Q. Well, the Court then goes on to say,
18 "This may be so." A full sentence, "This may be
19 so. Period."

20 What do you understand that to mean?

21 MR. STAIR: Where is that one,
22 Larry?

23 MR. RICHTER: Right after the one
24 for the footnote. One, two, three, four, five
25 lines up from the bottom on page 6 in the body.

1 MR. STAIR: Object to the form.

2 Q. What do you understand that to mean?

3 A. I understand that to mean that the Court
4 interprets my response to saying "beyond the
5 scope of the deposition" was a direct -- was done
6 so because of Mr. Stair said it was beyond the
7 scope of the deposition.

8 Q. Then let's go forward and get to the end
9 of this.

10 The order continues, "In sum,
11 Attanasio's and LS3P's counsel's behavior was
12 inappropriate and violated Federal Rules of Civil
13 Procedure 30(c)(2) and Local Civil Rule 30.04
14 (c), Federal Rule of Civil Procedure 30(c)(2)
15 noting counsel, not the deponent, should state on
16 the record objections in a non-argumentative and
17 non-suggestive manner."

18 Do you understand what that means?

19 A. Yes, sir.

20 Q. And do you understand that this is in
21 the record now for all of time that you've been
22 found to have violated those rules?

23 A. Yes, sir.

24 MR. STAIR: Object to the form.

25 Q. Now, I'd like to go on through the

1 sentence that begins "Local Civil Rule 30.04"
2 where the parentheses begin noting that, quote,
3 counsel shall have an affirmative duty --

4 MR. STAIR: Where is that, Larry?
5 Okay. I see it. I see it.

6 Q. -- to inform their clients that
7 unless -- brackets -- an objection regarding
8 privilege or a court-ordered limitation, closed
9 bracket -- is made, the question must be
10 answered. And that's in, again, italics. So it
11 is highlighted or emphasized.

12 Do you understand that?

13 A. Yes, sir.

14 Q. Now, that didn't happen in the
15 deposition, did it?

16 MR. STAIR: Object to the form.

17 MR. DUKES: Same objection.

18 A. On some questions.

19 Q. You think it did happen on some
20 questions? How many times were you instructed
21 not to answer?

22 A. I was never instructed not to answer,
23 that I recall.

24 Q. "Considering the above, the Court finds
25 LS3P and its counsel failed to comply with the

1 rules governing the conduct of oral
2 depositions" -- Federal Rules of Civil Procedure
3 30(c) -- 30(c) and local Rule 30.04. "The Court,
4 therefore, directs LS3P to make Attanasio
5 available to the plaintiffs to complete in its
6 entirety the Rule 30(b)(6) deposition of LS3P."

7 Do you understand what that means?

8 A. Yes, sir.

9 Q. That's what -- why you're here today,
10 isn't it?

11 A. Yes, sir.

12 Q. Now, I want to use this as a point of
13 demarcation so that we can identify a time frame.
14 There came a time when LS3P got a letter from me
15 saying, "Want to take some depositions." I
16 didn't say it in those words. I'm paraphrasing,
17 as you, I'm certain, recognize.

18 From that point in time until the day of
19 the deposition, the beginning of this deposition,
20 that point of time, who did you talk to about
21 this matter?

22 A. John Works, Eric Aichele, Kent Stair --

23 Q. Let's start --

24 A. -- Marc Marchant.

25 Q. Oh, I'm sorry. I didn't mean to cut you

1 off.

2 A. Four people.

3 Q. Who is Marc Marchant?

4 A. CEO of LS3P.

5 Q. Let's start with him. We'll go
6 backwards on this.

7 What was your conversation with Marc
8 Marchant about the 30(b)(6) notification that I
9 sent?

10 A. How to deal with the request for a
11 30(b)(6) witness.

12 Q. And who initiated that conversation?

13 A. I don't recall.

14 Q. Where did it occur?

15 A. Over the phone.

16 Q. Was it recorded?

17 A. No.

18 Q. What phone were you on?

19 A. Probably my cell phone.

20 Q. What's the number of the cell phone?

21 A. 704-301-7463.

22 Q. And where was Mr. Marchant?

23 A. I do not know.

24 Q. You initiated the call?

25 A. I don't recall.

1 Q. And you haven't changed cell phones or
2 numbers. I think we discussed that previously.

3 A. Right.

4 Q. Please don't until we get past what
5 we're going to have to get past in this case.

6 Now, what was Mr. Marchant's instruction
7 to you in that phone call?

8 A. I don't recall.

9 Q. And you initiated the call?

10 A. I don't -- I don't recall that.

11 Q. Oh, you don't recall that.

12 A. I don't recall who initiated the call.

13 Q. I'm sorry. I think you said that, that
14 you don't recall that.

15 What is it that you learned in that
16 conversation?

17 A. I don't remember exactly what was
18 discussed. So I -- I can't remember what -- how
19 to answer that question.

20 Q. Were you told that you would be a
21 30(b)(6) designee of LS3P?

22 A. I don't know if I was told or how we
23 came about to determining that I would be the
24 30(b)(6) designation -- designee.

25 Q. Do you know where you were when that

1 happened?

2 A. I do not.

3 Q. Likely in your office or your home in
4 Charlotte? Charlotte area?

5 A. Probably likely at home because I
6 haven't been in my office for many months.

7 Q. Yeah. You said that when we were here
8 earlier. I see that you have two shoes on --

9 A. Yes, sir.

10 Q. -- today. Looks like you're making
11 progress in that regard.

12 Did you express your opinion of who
13 would be the best 30(b)(6) witness for LS3P in
14 the sense of broadest knowledge base?

15 A. You know, I don't recall the specifics
16 of the conversation.

17 Q. What do you recall about the
18 conversation?

19 A. I -- I think the conversation was about
20 the fact that you had asked to come speak to Marc
21 Marchant, I think. And I think we -- we
22 discussed who the 30(b)(6) was going to be and
23 the fact that we would prefer not to talk to you
24 because we had outside counsel, and you should be
25 talking to outside counsel.

1 Q. And did -- to your knowledge, did LS3P
2 write back and say that; or did it just go engage
3 Mr. Stair?

4 A. I don't know how -- I don't know if
5 Mr. Stair got back to you with that or not. I
6 don't know how that went from there. Don't
7 recall.

8 Q. In any event, you've now summarized that
9 conversation as best you can. Is that fair?

10 A. Yes, sir.

11 Q. Thank you.

12 Who's the next person that you spoke to?
13 Aichele you said you spoke to?

14 A. Yes, sir.

15 Q. And when was that conversation in
16 relation to your conversation with Marchant?

17 A. I don't recall. I don't remember if it
18 was before or after.

19 Q. And do you remember the substance of
20 your conversation with Aichele?

21 A. The subject -- the -- I vaguely remember
22 the conversation with Aichele dealing more about
23 the -- the project, the Bishop England High
24 School project.

25 Q. In what aspect?

1 A. The design of the project.

2 Q. And what did y'all discuss about the
3 design? You and Aichele about the design?

4 A. The window that was in question.

5 Q. And what did y'all say to each other
6 about the window?

7 A. Do you remember this, or do you remember
8 that about the window.

9 Q. That's what I want to know. Do you
10 remember what -- or do you remember what else
11 about the window?

12 A. That -- that was the conversation.
13 Probably the majority of the conversation.

14 Q. Yeah. What did you ask him if he
15 remembered about the window?

16 A. I think we talked about did they ask for
17 it? Did we do it? Did we do it on most schools?
18 I mean, questions about the design of that window
19 and why it was there.

20 Q. With you propounding those questions to
21 him?

22 A. It's a back and forth probably.

23 Q. And what did you learn?

24 A. He didn't recall many of the questions
25 that we had.

1 Q. So did you get an answer or did you give
2 an answer to the inquiry whose idea was it to put
3 in the window?

4 A. I think the answer was I don't recall.

5 Q. That was Aichele's answer to you?

6 A. I don't remember who asked for it.

7 Q. But if he asked you that, you'd say, "I
8 don't recall." You would have said --

9 A. Yeah, I -- I -- correct.

10 Q. Thank you.

11 And if you asked him, he either did say
12 or you think he would have said, "I don't
13 recall"?

14 A. Correct.

15 Q. Thank you.

16 Now, have you pursued that issue, whose
17 idea it was to put in the window to view students
18 that are naked or partially naked?

19 A. No.

20 Q. You never asked anybody else why that
21 happened?

22 A. Have I pursued the answer to the
23 question --

24 Q. Yeah.

25 A. -- about -- no, I have not.

1 Q. So you didn't ask anybody else where
2 this window came from? Whose idea this was?

3 A. Correct.

4 Q. Did you ask them did they know that
5 naked children would be on one side of the window
6 and an adult or some adults or some students or
7 some passersby would be outside looking through
8 the window?

9 MR. STAIR: Object to the form.

10 MR. DUKES: Objection.

11 A. No.

12 Q. Can you tell me why you would not have
13 posed -- why you did not pose those questions?

14 MR. DUKES: Object to the form.

15 MR. STAIR: Object.

16 A. Because the question was: "Who asked
17 for the window?" Or "who decided on the window?"
18 And when it was answered, "I don't know," there
19 was nobody else to ask for Bishop England High
20 School. There was nobody else to ask.

21 Q. What do you mean by --

22 A. Eric is the only one there who worked on
23 the project.

24 Q. And why --

25 A. Being LS3P.

1 Q. Then why is he not --

2 A. Because I was determined to be the
3 30(b)(6) designee, not Eric.

4 Q. And who made that determination?

5 A. I don't recall who made the final
6 decision.

7 Q. And they decided to use someone who was
8 not the person who was there at the relevant
9 times and on the relevant issues?

10 A. Correct.

11 MR. STAIR: Object to the form.

12 MR. DUKES: Object to the form.

13 Q. Have you asked anybody, "Why would you
14 send me as opposed to Aichele when he knows more
15 than I do?"

16 MR. STAIR: Object to the form.

17 A. I have not.

18 Q. Do you understand that a jury is going
19 to look at you testifying and pass upon the
20 believability of what you say?

21 MR. STAIR: Object to the form.

22 A. I haven't given that any thought.

23 Q. Well, let me tell you, I think that's
24 what will happen.

25 MR. DUKES: Object to the form.

1 Q. Just so you can know where the case goes
2 and how it flows.

3 MR. STAIR: Object to the form.

4 Q. So your response as a 30(b)(6)
5 representative to the question whose idea was it
6 to put the window in -- windows plural in -- what
7 is your answer to that?

8 A. I do not know.

9 Q. And you've told us everything that
10 you've done to determine that; is that correct?

11 A. Well, I have looked at how many other
12 schools have windows between locker rooms and
13 coach's offices because I've been doing this for
14 35 years; and I recall the majority of those
15 locations have a window for security reasons.

16 Q. Majority of which locations?

17 A. Locker rooms and coach's office adjacent
18 to those lockers rooms.

19 Q. And you said for security purposes?

20 A. Yes, sir.

21 Q. And what is -- did those windows that
22 you're referring to -- you used the word
23 "majority." Do those windows that you're
24 referring to have blinds on them?

25 A. Sometimes, yes, sir.

1 Q. What are the blinds there for?

2 A. I'm not sure why we put blinds there.

3 Q. Well, does LS3P do that; or does the
4 school?

5 A. The blinds are usually specified for
6 those locations.

7 Q. At Bishop England were the blinds so
8 specified?

9 A. I believe so.

10 Q. And does that mean that LS3P would have
11 made that specification or that the school would
12 have directed y'all to put one --

13 A. I'm not sure. I don't know.

14 Q. And you haven't made any inquiry to find
15 out?

16 A. I have not looked at that, yes, sir.

17 Q. What are the blinds designed to do?

18 A. Well, I guess limit view.

19 Q. And why would you want to limit view if
20 you -- as you said a while ago -- were creating a
21 view portal in the corridor for the security of
22 the students? Why would you want to limit that?

23 MR. DUKES: Object to the form.

24 MR. STAIR: Object.

25 A. There may be an occasion for someone in

1 the office to limit view back into the office.

2 Q. So it's for the sake of the person who
3 is --

4 A. That's one thought that comes to mind,
5 yes, sir.

6 Q. Any others?

7 A. No, not to mind.

8 Q. In this case there was a window looking
9 into each of the three large dressing rooms.

10 Do you agree with that?

11 A. Yes, sir.

12 Q. And on each door to the office which
13 adjoined the locker room, except for that glass
14 window being between the two, was there a window
15 in the door of each of those offices?

16 A. I don't recall not looking at the plans.

17 Q. I can make that available to you and
18 we'll -- and what is it that kept people from
19 looking through the office door if it had a
20 viewing window in it? Or any kind of window in
21 it? What kept people from looking through that
22 and looking through the blinds at the naked
23 children who are just finished with, let's say,
24 PE class and wiping the sweat off themselves and
25 getting ready to go back to class?

1 MR. STAIR: Object to the form.

2 MR. DUKES: Same objection.

3 A. I'm not sure I understand your question.
4 I heard you say what -- what prevented someone
5 from looking through a -- possibly a window in a
6 door through the glass between the dressing room
7 and the office and into the dressing room?

8 Q. Yeah.

9 A. I suspect that if the blinds were open
10 and there was a door in that window, nothing.

11 Q. Why would you design such an arrangement
12 so that someone in the hallway, anybody in the
13 hallway, could look standing in the hallway
14 through the office door window, through the
15 window on the other side of the office into the
16 locker room, and see children naked?

17 A. I don't think that's the way it was
18 designed.

19 MR. DUKES: Object to the form.

20 Q. You don't think that was the way it was
21 designed?

22 A. No, sir, I don't believe that --

23 Q. Has that changed?

24 A. I don't think so.

25 Q. Have you ever been there?

1 A. Not in Bishop England High School.

2 Q. You never have?

3 A. I think you had to go into a door
4 leading to the dressing room. I don't think the
5 window -- I don't think the coach's office opens
6 directly off a corridor outside the dressing
7 room. I'd have to look at the plans to be able
8 to determine that.

9 Q. I've got the plans.

10 A. Okay.

11 Q. Of course, I have the plans. I
12 represent to you that it did.

13 A. Okay.

14 Q. It does. And I want to make sure I
15 understand. You have never set foot in Bishop
16 England High School?

17 MR. STAIR: Object to the form.

18 A. Oh, yes, sir. I've been to Bishop
19 England High School, yes, sir.

20 Q. How many times?

21 A. I do not know.

22 Q. How recently?

23 A. At least 20 years because I've been in
24 Charleston -- I've been in Fort Mill for 20
25 years. So over 20 years.

1 Q. The last time you were there was 20 over
2 years ago?

3 A. Yes.

4 Q. Have you been in the locker rooms?

5 A. I don't recall.

6 Q. Do you agree that the viewing windows
7 I've been questioning you about afforded persons
8 who looked through those windows a view of the
9 students -- who I've referred to earlier being
10 naked sometimes, sometimes fully clothed --
11 sometimes fully clothed -- provided a view of
12 those students without the students knowing that
13 they were being viewed by somebody?

14 MR. DUKES: Object to the form.

15 A. There is a potential for that.

16 Q. Yeah. Why didn't you guard against
17 that?

18 MR. STAIR: Object to the form.

19 A. The design for placing the window there
20 was for security reasons, to be able to
21 potentially prevent or to stop an incident of
22 misbehavior.

23 When someone enters the dressing room, a
24 student, a student would understand if they're
25 going to change from street clothes to gym

1 clothes, have gym class, when they come back,
2 change from gym clothes back to street clothes,
3 when they enter the locker room, they have to
4 pass by that window. So they know the window's
5 there.

6 Q. So do they agree -- those students agree
7 and consent to being viewed naked?

8 MR. DUKES: Object to the form.

9 MR. STAIR: Object to the form.

10 A. I can't answer that.

11 Q. Then what are you saying? I don't
12 understand.

13 A. I don't know that they consent to
14 changing. I mean, when they go in there, they
15 expect to change from street clothes to gym
16 clothes and then back to street clothes.

17 Q. You indicated you had two children. One
18 is now deceased; correct?

19 A. Correct.

20 Q. Did your children -- did you put them in
21 a school where they were made to take their
22 clothes off and get naked in front of a viewing
23 window?

24 MR. DUKES: Object to the form.

25 A. My children went to a public school

1 which had a similar condition, yes, sir.

2 Q. Had a similar viewing condition?

3 A. Yes, sir.

4 Q. What school is that?

5 A. Fort Mill High School, I believe.

6 Q. And when did you learn of those windows
7 in Fort Mill High School?

8 A. Well, I can't say for sure because I
9 didn't go into Fort Mill; but, again, I've been
10 doing this for 35 years, and schools are designed
11 with the viewing window for security purposes.

12 Q. Who told you that?

13 A. It's just what we do. I mean, I -- I've
14 been on construction administration facilities
15 from middle schools and high schools where that
16 is a component of the design.

17 Q. It was here, wasn't it?

18 A. It was.

19 Q. And y'all made it up; and you put it in
20 the plans, didn't you?

21 A. Yes, sir.

22 Q. You thought it up; correct? You, LS3P,
23 thought it up?

24 MR. STAIR: Object to the form.

25 A. I don't know if that particular item was

1 discussed in the planning of the Bishop England
2 school.

3 Q. You don't know if it was discussed
4 amongst whom?

5 A. The designers of LS3P and the people
6 representing Bishop England at the time.

7 Q. And who were the designers of LS3P that
8 drew the design at Bishop England High School?

9 A. Eric was probably one of them. But who
10 are the others? I'm not sure.

11 Q. And are those the same people who
12 decided not to warn these children, these minors,
13 that they would be viewed naked, if they were
14 naked, half clothed if they were half clothed, or
15 fully clothed if they were fully clothed?

16 MR. DUKES: Object to the form.

17 MR. STAIR: Object to the form.

18 A. I don't believe so.

19 Q. Who decided, then, not to warn these
20 children, these minors, that they may be viewed
21 naked if they were naked, half clothed if they
22 were half clothed, or fully clothed if they were
23 fully clothed?

24 MR. STAIR: Object.

25 A. I do not know.

1 Q. Well, then how do you know it was not
2 these design people?

3 A. I don't know. I said I don't know.

4 Q. You didn't say you don't know. What you
5 said was "I don't believe so." That's the truth
6 of what you said, isn't it?

7 A. Yes, sir.

8 MR. STAIR: Object to the form.

9 Q. Then why did you --

10 MR. DUKES: Same objection.

11 Q. -- then say, "I said I don't know."

12 A. To me, I don't believe so, I don't
13 know -- I don't know who -- your question was did
14 the designers tell the students that they might
15 be viewed, as you say clothed, partially clothed,
16 naked.

17 I don't believe the designers did
18 because designers don't generally talk to the
19 students. The designers design the building.
20 It's then drawn. It's then constructed. Many of
21 the designers don't have anything to do with the
22 school once it's open, other than going to visit
23 the school to see how it's working.

24 Q. I'll be glad to read the question back
25 to you if you'd like to --

1 A. Please do.

2 Q. Question I asked you was: Who were -- I
3 asked you about who the designers were. You said
4 Eric would have been one of whoever else helped
5 him, but Eric would have been in the mix doing
6 that. Then we went to the next question, which
7 is this:

8 "And are those the same people who
9 decided not to warn these children, these minors,
10 that they would be viewed naked if they were
11 naked, half clothed if they were half clothed, or
12 fully clothed if they were fully clothed?"

13 And you said: Answer, "I don't believe
14 so."

15 Now, you were asked, then, if these same
16 designers you had referenced just in the question
17 preceding, if those were the same people who made
18 that decision not to tell the children that they
19 were going to be viewed naked if they were naked.

20 MR. DUKES: Object to the form.

21 Q. And all the rest that was in the
22 question.

23 And you said, "I don't believe so." And
24 who do you believe made that decision?

25 MR. STAIR: Object to the form.

1 MR. DUKES: Same objection.

2 A. I want to make sure I understand. Made
3 the decision to inform the students?

4 Q. No.

5 A. Made the decision --

6 Q. Not to inform the students.

7 A. Made the decision not to inform the
8 students?

9 Q. That's right.

10 A. Again, the typical process is the
11 designers are usually not speaking with students
12 during the use of the building. I mean, the
13 decision was made way before a student occupied
14 that facility.

15 Q. What decision?

16 A. To put a window there.

17 Q. That's not what I'm asking you.

18 I asked you who made the decision not to
19 tell the students who were nude on the other side
20 of that 4-foot glass window?

21 A. And I don't know --

22 MR. STAIR: Object to the form.

23 MR. DUKES: Same objection.

24 A. -- if -- if anybody made a decision not
25 to tell a student. I'm not aware of anybody.

1 Q. Who told students that?

2 MR. STAIR: Object to the form.

3 MR. DUKES: Object to form.

4 A. You're confusing me. Who told the
5 students what? That they would be viewed?

6 Q. That they may be viewed naked if they
7 were naked, half clothed if they were half
8 clothed, or fully clothed if they were fully
9 clothed.

10 MR. STAIR: Object to the form.

11 Roger, let me object first. Then
12 answer. So I can make the objection, please.

13 Object to the form.

14 A. I don't know if anybody informed the
15 students.

16 Q. We have no evidence that anybody
17 informed. We have seen -- I have seen as lead
18 counsel in this case, seen no evidence of anybody
19 informing the students.

20 MR. DUKES: Object to the form.

21 Q. You testified previously that there were
22 no signs warning anybody of anything. Do you
23 remember that?

24 MR. STAIR: Object to the form.

25 A. Yes, I do.

1 Q. And now you're saying you don't have any
2 evidence that anybody ever warned anybody that
3 students who were naked in the dressing room
4 could be seen and viewed by whoever looked
5 through the window at them?

6 MR. STAIR: Object to the form.

7 A. Correct.

8 Q. Why would that be?

9 MR. STAIR: Object to the form.

10 A. Well, I would assume that when a student
11 enters a locker room, they understand the concept
12 of changing from street clothes to gym clothes,
13 have gym class, and then change from gym clothes
14 to street clothes.

15 And when they bypass a window that's
16 going from the locker room, they would understand
17 that there's a window there; and if they would
18 have an objection to undressing, they should
19 bring that to the attention of the coach, the
20 teacher, whomever.

21 Q. So you -- are you saying that the burden
22 is on the children to prevent themselves from
23 being viewed as opposed to upon the school or the
24 staff or the adults or whoever else may view them
25 through the window that LS3P drew in these plans?

1 MR. STAIR: Object to the form.

2 A. No.

3 Q. I'm sorry?

4 A. No.

5 Q. You're not saying that?

6 A. Correct.

7 Q. What are you saying? I don't
8 understand. I'm sorry.

9 A. I'm saying that a student understands
10 when they go into a dressing room that they're
11 going to be changing from street clothes to gym
12 clothes and then back to street clothes. They
13 understand that concept. They know that before
14 they go into the dressing room.

15 Q. So what? I'm sorry. I'm not
16 understanding what you're saying.

17 A. That's part of the dressing room. When
18 you go into a dressing room, you know that's
19 what's going to happen.

20 Q. And do you think that a student who goes
21 into the dressing room consents to someone
22 viewing them naked?

23 MR. DUKES: Object to the form.

24 MR. STAIR: Object to the form.

25 A. No. I would say no.

1 Q. Are you aware that we have asked Bishop
2 England for various documents, including
3 documents of incidents, for example, that they
4 would respond to? You talk about security and
5 safety purposes. They have -- that they in their
6 pleading said, "That's what we were trying to do,
7 just keep everybody safe." We wanted to know if
8 something happened in there, but they don't have
9 any documents --

10 MR. DUKES: Object to the form.

11 Q. -- of even one incident in 21 years
12 taking place in the dressing rooms.

13 MR. STAIR: Object to the form.

14 MR. DUKES: Object to the form.

15 Q. Do you understand?

16 MR. STAIR: Object.

17 A. I understand your statement.

18 Q. Do you know of any such document?

19 A. I'm not aware of any, no, sir.

20 Q. Do you know that we asked Bishop
21 England -- and they're required to give us these
22 things, unless they are going to live with
23 breaking the rules, like you have.

24 MR. DUKES: Object to the form.

25 MR. STAIR: Objection.

1 Q. And Mr. Stair. I didn't mean to leave
2 him out. You and Mr. Stair have been found to
3 have done.

4 MR. STAIR: Object.

5 Q. We have asked them for copies of the
6 disclosure to the parent or tuition payer that
7 the children would be viewed naked, and they
8 haven't provided us one piece of paper because
9 they don't have any --

10 MR. DUKES: Object to the form.

11 Q. -- that show -- we believe they don't
12 have any that show any notice to the parents that
13 their children are going to be viewed naked.

14 Do you have any knowledge of any such
15 notification to parents or tuition payers?

16 MR. STAIR: Object to the form.

17 MR. DUKES: Object to the form.

18 A. I do not.

19 Q. Well, let me see if you know this: Most
20 children in high school are not adults. Do you
21 realize that and agree with that?

22 A. Yes, sir.

23 Q. And do you know that a child cannot
24 consent to being viewed naked?

25 MR. DUKES: Object to the form.

1 MR. STAIR: Object to the form.

2 Q. Are you aware of that?

3 MR. STAIR: Object.

4 A. Yes, sir.

5 Q. Then how could these children be charged
6 with the responsibility you're trying to lay on
7 them now of going into a dressing room
8 undressing, getting naked, changing clothing to
9 gym clothing, as you talked about -- physical
10 education type clothes, as you talked about a
11 moment ago -- then coming back and cleaning up
12 and doing the same process in reverse in front of
13 a 4-foot by 4-foot glass window?

14 MR. STAIR: Object to the form.

15 MR. DUKES: Object to the form.

16 THE WITNESS: I'm sorry. Could you
17 repeat the first part of his question? Because I
18 want to make sure what he asked me.

19 MR. RICHTER: I'll be glad to read
20 it back, if it'll help you.

21 MR. STAIR: Subject to the
22 objection.

23 MR. DUKES: Same objection.

24 Q. How could these children be charged with
25 the responsibility you're trying to lay on them

1 now of going into the dressing room, undressing,
2 getting naked, changing clothing to gym type
3 clothing, as you talked about -- physical
4 education type clothing, as you talked about a
5 moment ago -- and then coming back and cleaning
6 up in front of a 4-foot by 4-foot glass window?

7 Then they interrupted with objections.
8 Both counsel, Mr. Stair and Mr. Dukes did at that
9 point. And you did -- you then said, you got to
10 say it again 'cause you couldn't get it all.

11 All I'm trying to ask you is: If
12 children can't consent to that and parents aren't
13 notified of it or tuition payers for the children
14 are not notified of it, what is it you're saying?
15 Whose responsibility is it that these children
16 were viewed naked?

17 MR. DUKES: Object to the form.

18 MR. STAIR: Object to the form.

19 A. I'm not saying whose responsibility it
20 was to -- for children to be viewed naked. My --
21 my statement was: When a student goes into the
22 dressing room, they understand that they're going
23 to be changing clothes. Street clothes to gym
24 clothes back to street clothes.

25 They're going to bypass this window. So

1 they're going to know the window's there. I
2 mean, they have some idea that they're going to
3 be changing clothes; and there's a window there.
4 Whether they think about it or not, I don't know.

5 I'm not saying -- I said if they were
6 uncomfortable with doing that, they had the
7 opportunity to go talk to a teacher, coach,
8 supervisor, whoever was inside that office or
9 directing them to go into the dressing room to
10 change clothes to say, "I'm uncomfortable."

11 Q. Who told you --

12 A. That's what I was saying.

13 Q. I didn't mean to interrupt you. I'm
14 sorry.

15 A. That's what I was implying.

16 Q. Who told you that the students have such
17 a responsibility?

18 A. I didn't say that students had a
19 responsibility.

20 MR. STAIR: Object to the form.

21 A. I said they had an opportunity.

22 Q. Who told you that students have such an
23 opportunity?

24 MR. STAIR: Object to the form.

25 A. That's what I assume by going in there.

1 By them going into there, they have an
2 opportunity to say something, if they so desire,
3 if they're so uncomfortable.

4 Q. To who?

5 A. To the teacher. To the person in the
6 room. To the coach, whoever is running the
7 class.

8 Q. How do they get that opportunity? Can
9 they just walk out of that PE class?

10 MR. STAIR: Object to the form.

11 A. They can say something before they go
12 in. They can say something once they get in
13 there. They can say something before they change
14 clothes.

15 Q. Now, when they go in, are the blinds
16 open or closed?

17 A. I do not know.

18 Q. Then how could they know, for example,
19 if the blinds were closed or apparently closed?
20 How could they know that someone or some group of
21 people may be looking through the window at them?
22 Maybe even photographing them?

23 MR. DUKES: Object to the form.

24 MR. STAIR: Object to the form.

25 A. I do not know how -- I don't think they

1 can know.

2 Q. Well, then how could they complain about
3 that?

4 MR. DUKES: Object to the form.

5 MR. STAIR: Object to the form.

6 A. I was saying if they were uncomfortable
7 with changing clothes in front of a window, they
8 had an opportunity to say something to a coach, a
9 teacher, an instructor, whoever was there.
10 That's what I was saying.

11 Q. And I asked you who told you that? And
12 you said --

13 A. Nobody told me that. That's just --

14 Q. So that when they go to your house --
15 your next-door neighbor comes over and goes to
16 your house and goes to the bathroom, that person
17 closes the door behind them and goes in the
18 bathroom; right?

19 A. Generally, yes, sir.

20 Q. You do that yourself, don't you? I
21 mean, if you went to your neighbor's house, you
22 had to go to the restroom, you'd go in there,
23 close the door, and perhaps urinate if that's
24 what you needed to do at that moment. Right?

25 A. Yes, sir.

1 Q. And do you think it's your
2 responsibility at that point to say, "Look,
3 there's a door here. Somebody can open that door
4 and look at me while I'm urinating. I don't like
5 that. I want you to not -- I want somebody to
6 stand guard at this door and not allow people to
7 look at me while I urinate."

8 Is that what you're saying?

9 MR. STAIR: Object to the form.

10 MR. DUKES: Same objection.

11 A. No, sir.

12 MR. RICHTER: All right. Let's
13 take a break.

14 Q. Before we do -- before we do, what are
15 the blinds intended to impart to the students?

16 MR. DUKES: Object to the form.

17 MR. STAIR: Object to the form.

18 MR. RICHTER: Now, Rich, are you
19 also saying outside of scope as Mr. Stair is?

20 MR. DUKES: That's not my role.
21 I'm just objecting to the form of the question.

22 MR. RICHTER: That's what I asked.
23 Are you saying it's outside the scope, or are you
24 simply stating you object to the form of the
25 question?

1 MR. DUKES: Simply stating that I
2 object to the form of the question.

3 MR. RICHTER: Correct.

4 MR. DUKES: Yeah.

5 A. You're going to have to repeat the
6 question again. I'm sorry. I got distracted by
7 your comment.

8 Q. Question that I asked was this: "What
9 are the blinds intended to impart to the
10 students?"

11 MR. DUKES: Object to the form.

12 MR. STAIR: Object to the form.

13 A. Limiting view.

14 Q. So what are the students, then, to
15 believe when they go into the dressing room as
16 they must do for the PE transition that you've
17 talked about earlier? What are the students to
18 understand by the fact that the blinds appear
19 closed?

20 MR. STAIR: Object to the form.

21 MR. DUKES: Object to the form.

22 A. Our intent for the window was to allow a
23 supervisor to attempt to break up an activity
24 that was not supposed to occur in the dressing
25 room between students.

1 I would think that the window would let
2 the students know that I shouldn't be doing
3 anything other than changing clothes, getting to
4 class, and come back and change my clothes, get
5 back in my street clothes, and go. No horseplay.
6 The window was supposed to, maybe, give somebody
7 a -- an idea that I shouldn't -- shouldn't do
8 horseplay in this space.

9 Q. We're talking about the blind right now.
10 I asked you what the blinds were designed to say
11 to the students or impart to the students.

12 A. I don't -- I don't know if the -- I
13 don't know if there's an intent for what a
14 student should say about blinds. I don't -- I
15 don't recall. I don't know how to answer that
16 question.

17 Q. Well, what are blinds for?

18 A. Limiting view. Protecting from sun.

19 Q. Or obstructing view; correct?

20 A. Could be.

21 Q. You are not certain that blinds are
22 intended to obstruct view?

23 A. They could be used for that, yes, sir.

24 MR. DUKES: Object to the form.

25 Q. I just asked if you are saying that you

1 agree or you don't agree that blinds are intended
2 to obstruct view? That's all I'm trying to ask
3 you.

4 MR. STAIR: Object to the form.

5 A. And my answer is, yes, they could be,
6 yes, sir.

7 Q. And they could be used, couldn't they,
8 to lure a student into thinking, "Nobody can see
9 me. The blinds are closed"?

10 MR. DUKES: Object to the form.

11 MR. STAIR: Object to the form.

12 Q. They could have that effect, couldn't
13 they?

14 MR. STAIR: Object to the form.

15 A. Could, yes, sir.

16 Q. And do you agree that there is a place
17 in the opening or closure of blinds where it
18 looks like -- from the inside, let's say, or from
19 the -- from the other side of the blind -- I
20 don't know how you describe one side versus the
21 other, but from the dressing room side of the
22 blind, where it can look like it's a solid bar to
23 view. But, in fact, you can see out.

24 These blinds in this room, if you'd like
25 to look at them, you'll see they're all three --

1 the three blinds are all at three different
2 levels of closure, which changes their look from
3 the other side of the blind, doesn't it?

4 MR. STAIR: Object to the form.

5 MR. DUKES: Object to the form.

6 A. Yes, sir.

7 Q. And do you understand that a student can
8 be mislead to think that "I am safe from
9 uninvited viewing, that my privacy is not going
10 to be invaded 'cause it looks like the blinds are
11 closed, and my nudity is not going to be exposed
12 to persons who want to look at me"?

13 Do you understand that or not?

14 MR. STAIR: Object to the form.

15 A. It's possible, yes, sir.

16 Q. Do you think a jury will understand
17 that?

18 MR. STAIR: Object to the form.

19 MR. DUKES: Object to form.

20 MR. RICHTER: I'll withdraw it.

21 You don't need to answer.

22 Okay. Break time as we went a long
23 time, actually.

24 (Recess taken 11:27 a.m. to 11:43 a.m.)

25 MR. RICHTER: Let's to back on,

1 please.

2 BY MR. RICHTER:

3 Q. During this break did you discuss your
4 testimony with anyone?

5 A. No.

6 Q. Thank you.

7 I want to try to close -- start to say
8 close this blind discussion. I didn't mean to
9 make a play on words.

10 I'd like to try to close some circles
11 with you, please. We can tell better where we
12 are and what we need to do, make a reasonable
13 prediction.

14 Now, I'd like to clarify this, if we
15 can, if you can for us, please. Why do -- you
16 said some schools have windows. Some don't have
17 windows similar to the kind of thing that existed
18 at Bishop England. I take it that's what you
19 mean.

20 Is that what you mean?

21 A. I said all the schools that I've been
22 involved with have the window.

23 Q. All the schools that you've been
24 involved with have windows. Okay. And do they
25 all have blinds?

1 A. I don't recall that.

2 Q. Why would -- assume for the moment that
3 some had blinds. Some don't have blinds. Why
4 would some have blinds and some not?

5 MR. DUKES: Object to the form.

6 MR. STAIR: Object to the form.

7 A. I don't know. I don't know if some
8 districts ask for it or we just put on there as a
9 standard procedure. I can't answer that for
10 sure.

11 Q. You also said earlier before we took the
12 break that the blinds -- I think you said -- were
13 specified in the Bishop England High School
14 instance that we're discussing.

15 Did I hear that correctly?

16 A. I believe that to be correct.

17 Q. Now, where can I see that in the
18 specifications?

19 A. There's probably a blinds specification
20 section, and it may have a statement in it that
21 says where the blinds are to be installed. I'd
22 have to look at the contract documents to be able
23 to answer that fully.

24 Q. When you say "the contract documents,"
25 does that mean --

1 A. The specs, drawings.

2 Q. And have y'all produced those to us?

3 A. I'm not sure. Produced all we had.

4 Q. So that if I hand you whatever it is
5 that y'all gave us and I say to you, "Show me on
6 the specifications where it calls for blinds in
7 the locker room windows or on the locker room
8 windows" -- viewing windows we were calling them
9 in the reference work, it seemed like. So
10 viewing windows. Could you, then, turn in the
11 specifications to that and show it to me?

12 A. If it was there, yes, sir.

13 Q. If it was there.

14 Why would you put in a window and not --
15 put in a viewing window and not put in a method
16 to block the view?

17 MR. STAIR: Object to the form.

18 MR. DUKES: Same objection.

19 A. You know, I'm not sure, Mr. Richter.

20 Q. Let's go back to this little example we
21 used about going to the restroom in your own
22 home. Let's say I was your next-door neighbor.
23 I come over to your home to visit your family. I
24 want to go to the restroom while I'm there, and
25 you point it out to me. Off I go.

1 And there's a door, of course, as we
2 talked about earlier, on the restroom. Now, in
3 that door, is there a window?

4 A. Generally not.

5 Q. Why?

6 A. Activities in the restroom are one
7 that one doesn't need to view.

8 Q. And if blinds were present on the door
9 in your house to your restroom when I'm
10 urinating, would those blinds be on the inside of
11 the window so that I, the urinator, would control
12 them? Or on the outside in the hallway so that
13 you or anybody else who came down the hallway
14 could control them?

15 MR. STAIR: Object to the form.

16 MR. DUKES: Object to the form.

17 A. I would -- I would -- first off, there
18 wouldn't be a window in the restroom door.
19 Secondly, I would suspect they would be on the
20 inside given your --

21 Q. Then why -- I'm sorry. I thought you
22 were finished. Excuse me.

23 A. You, the urinator, to use your term,
24 would control it.

25 Q. Then why would it not be the student

1 who's getting naked who would have the control
2 right of the blind?

3 MR. STAIR: Object to the form.

4 A. I would think there would, you know. In
5 the design there would have to be a decision. Is
6 it -- is it the -- trying to provide limiting
7 view from one direction or the other? And the
8 decision was made to put it on the inside for the
9 coach or supervisor or the occupant of the
10 coach's office over the students in the locker
11 room.

12 Q. And you said there would not be a window
13 in the bathroom, the example we were talking
14 about a moment ago. What is the reason for that?
15 That there would not be a window?

16 MR. DUKES: Object to the form.

17 MR. STAIR: Object to the form.

18 A. In my opinion, there's no activity that
19 is occurring inside that bathroom that someone
20 from the outside would need to view or prevent
21 from happening.

22 Q. Let me change the facts just a little
23 bit.

24 When I and my wife, your next-door
25 neighbors, come over to your house for the visit

1 of the dinner, or whatever we're invited for, we
2 bring with us our two children, both sophomores
3 in high school at Bishop England High School, and
4 their two friends who are all having a sleep-over
5 at our house, and those two are juniors at Bishop
6 England High School.

7 Now we got four children present. Do
8 you agree with that?

9 A. Yes, sir.

10 Q. And all four of them go into the
11 bathroom at the same time. Do you need a window
12 to see what they're doing in there?

13 MR. STAIR: Object to the form.

14 MR. DUKES: Object to the form.

15 A. I don't believe so.

16 Q. Then why do you need one at Bishop
17 England High School?

18 MR. STAIR: Object to the form.

19 MR. DUKES: Same objection.

20 A. I don't have a window into the bathroom
21 at the Bishop England High School.

22 Q. You have a window into an area where
23 someone's nude body may be exposed, don't you?

24 MR. DUKES: Object to the form.

25 A. I have a window that allows viewing of

1 activities that could be detrimental to the
2 students, and we're trying -- the window's there
3 for security to try and prevent those unwanted
4 activities.

5 Q. And how many unwanted activities have
6 there been in the 21 years since Bishop England
7 opened its doors?

8 MR. DUKES: Object to the form.

9 MR. STAIR: Object to the form.

10 A. According to you, none.

11 Q. Whatever your source of information is,
12 you could have learned it from the Pope in Rome
13 as far as I'm concerned. How many are there?

14 MR. DUKES: Object to the form.

15 MR. STAIR: Object to the form.

16 A. I am not aware of any. I have not
17 searched for any. One could argue the window has
18 prevented it from occurring.

19 Q. One could argue that there had been none
20 because Bishop England either hasn't made any
21 record of any because they haven't occurred or
22 because the records are so horrible as to what
23 does occur in that bathroom.

24 MR. DUKES: Object to the form.

25 Q. That dressing room that they don't want

1 to give them up.

2 MR. DUKES: Object to the form.

3 Q. They're going to have to, if they exist.
4 They may have to fabricate it, but they're going
5 to have to do something to answer the inquiry.

6 MR. DUKES: Object to the form.

7 MR. STAIR: Object to the form.

8 Q. From what I hear you saying, that Bishop
9 England High School, the blinds are controllable.
10 They can be opened. They can be closed. They
11 can be cracked. They can be broadly opened. Am
12 I understanding you correctly?

13 MR. STAIR: Object to the form.

14 A. I think blinds have the ability to vary
15 the position, that is correct.

16 Q. Now, that's like a peephole, isn't it?

17 MR. DUKES: Object to the form.

18 MR. STAIR: Object to the form.

19 A. I don't know that I would say it's like
20 a peephole. I guess one could make that
21 argument, yes, sir.

22 Q. Well, when you go to the hotel/motel,
23 whatever it is, it's not infrequent that you see
24 instances where people scratch through the back
25 of the mirror and arrange a view portal --

1 peephole -- behind a mirror, for example. Or
2 that they plant a camera or do various things
3 that are not large in size, but they can be of
4 different sizes. You may make one size peephole.
5 The next fellow makes another size peephole.

6 Do you understand what I'm saying?

7 MR. STAIR: Object to the form.

8 MR. DUKES: Object to the form.

9 A. Yes, sir.

10 Q. That's what I'm trying to get to.

11 Why are these any different than a
12 peephole, these blinds at Bishop England High
13 School?

14 MR. STAIR: Object to the form.

15 MR. DUKES: Same objection.

16 A. Well, why are blinds any different than
17 a peephole?

18 Q. No. No. That's not the question.

19 The question is: Why are these blinds
20 at Bishop England High School on the viewing
21 windows into the children's dressing areas, why
22 are those any different than a peephole?

23 MR. STAIR: Object to the form.

24 MR. DUKES: Same objection.

25 A. There's nothing special about the blinds

1 at Bishop England High School. It is a mini
2 blind with varying degrees of control, and I
3 believe it's the individual inside the office who
4 has the ability to control the blinds. So I
5 don't know.

6 Again, I don't call it a peephole. It's
7 a blind for some -- for the ability to see
8 through and -- and observe any activity that's
9 not wanted going on in the -- in the dressing
10 room. I -- I don't know that I can answer your
11 question. I don't know how to answer your
12 question.

13 Q. Or to observe activity that the viewer
14 does want to see is going on in the dressing
15 room. Used for that too?

16 MR. DUKES: Object to the form.

17 MR. STAIR: Object to the form.

18 A. The potential exists, yes, sir.

19 Q. Do you know anything about the Catholic
20 church and its institutions record about sexual
21 abuse of children?

22 MR. STAIR: Object to the form.

23 MR. DUKES: Object to the form.

24 A. Yes.

25 Q. What is it that you know about that?

1 A. What I've heard --

2 MR. STAIR: Object to the form.

3 MR. DUKES: Same objection.

4 A. What I've heard through the years being
5 in the news.

6 Q. Tell me what it is.

7 A. Being in the news.

8 MR. STAIR: Object to the form.

9 MR. DUKES: Same objection.

10 A. Child abuse.

11 Q. What does that mean? "Child abuse"?

12 MR. STAIR: Object to the form.

13 MR. DUKES: Same objection.

14 A. To me it means an adult doing things
15 with a child that is unwarranted.

16 Q. Do you mean an adult performing sexual
17 acts on a child? Is that what you're referring
18 to?

19 MR. STAIR: Object to the form.

20 MR. DUKES: Same objection.

21 A. Could be one of them.

22 Q. Now, when I posed the question to you
23 just a half a minute ago, you chuckled. I want
24 to know why that is.

25 A. What was the question?

1 MR. STAIR: Object to the form.

2 Q. "Do you know anything about the Catholic
3 church and its institutions about sexual abuse of
4 children?" They both objected. You chuckled. I
5 want to know why.

6 A. I was raised Catholic.

7 MR. STAIR: Object to the form.

8 A. I was raised Catholic and I, you know.
9 I guess I anticipated you asking that question,
10 and there are thoughts that went through my head
11 how I might answer that question. So that's why
12 I chuckled.

13 Q. What is it that you chuckled at?

14 A. Thoughts of what I might say in response
15 to that question that I anticipated you asking.

16 Q. Well, what you have to say, of course,
17 is the truth, whatever the true answer is. Yes,
18 that's what you have to say.

19 MR. DUKES: Object to the form.

20 Q. So have you not done that?

21 A. I have done that, yes, sir.

22 Q. You said you were raised Catholic. Is
23 that where you learned about the Catholic church?
24 We talked about its history and activities for
25 the moment -- a moment ago. You might remember,

1 and they are your child sexual abuse.

2 And I just wondered what it is about
3 that area, child sexual abuse, that brings a
4 chuckle. And I think I hear you saying, "I'm
5 chuckling because I thought you might ask -- you
6 might ask me that question."

7 Well, I did ask you that question. But
8 I'm asking you what's funny about that?

9 MR. STAIR: Object to the form.

10 MR. DUKES: Object to the form.

11 A. There's nothing funny about that.
12 There's nothing funny about child abuse.

13 Q. No, there's not.

14 A. Nothing funny.

15 Q. What about lying? Is there anything
16 funny about lying?

17 A. No, sir.

18 MR. STAIR: Object to the form.

19 MR. DUKES: Object to the form.

20 Q. Do you know what the church does, and
21 it's lawyers, about child sex abuse?

22 A. No.

23 MR. DUKES: Object to the form.

24 MR. STAIR: Object to the form.

25 Q. It and they lie.

1 MR. STAIR: Object to the form.

2 MR. DUKES: Object to the form.

3 Q. I represent that to you. I'll show you
4 a hundred examples, if you'd like to take the
5 time to see it.

6 MR. DUKES: Object to form.

7 MR. STAIR: Object to the form.

8 Q. When did you first learn that the
9 defendants in this lawsuit that we have brought
10 claim that they relied on the advice of
11 professionals regarding the design and
12 construction of Bishop England High School?

13 MR. STAIR: Object to the form.

14 A. I don't recall when I first learned that
15 the defendants made a statement that they relied
16 on the advice of professionals. I don't know.

17 Q. You came to learn that, didn't you?

18 A. Yes, sir.

19 Q. So I need to ask the now direct
20 question, which is a real time saver, if you can
21 answer it.

22 Did LS3P advise the Diocese/Bishop
23 England High School and its an entity of the
24 Diocese of Charleston -- I think you know that --
25 as to the design and construction of viewing

1 windows in the student locker rooms there?

2 A. I believe the design documents included
3 the window, the symbol for a window; and that
4 window would have been part of a set of documents
5 that those responsible for would -- reviewing the
6 documents at Bishop England would have had access
7 to. So they would have seen that window.

8 Q. And is it fair to say that if Bishop
9 England didn't sign off on whatever that design
10 sheet and all the design sheets were presented to
11 them, that y'all, LS3P -- 'cause that's you --
12 understand that's who you're speaking for here,
13 would not have gone forward with the construction
14 of those windows? Is that accurate?

15 A. If there would have been a -- an
16 objection to the window, the window would
17 probably have been removed, yes, sir.

18 Q. Well, how could it not -- what do you
19 mean "would probably have been removed"? Is it
20 your window? Is it Bishop England's window?

21 MR. DUKES: Object to the form.

22 MR. STAIR: Object to the form.

23 A. It was LS3P's documents that indicated
24 the window. After it was constructed, it's
25 Bishop England's window.

1 Q. And Bishop England didn't have the right
2 to say, "Here where you show double doors
3 opening, we want sliding doors." Is that what
4 your testimony is?

5 A. They could have said that, yes.

6 Q. Certainly. It's their -- it's Bishop
7 England's project; correct?

8 A. Right.

9 Q. It's their dollars that built it; right?

10 A. Correct.

11 Q. And their desires that built it the way
12 it is; right?

13 MR. DUKES: Object to the form.

14 A. So there's a program generally
15 generated, then, yeah. Bishop England has their
16 desires for that school and that program, yes,
17 sir. And we try to comply with that as much as
18 we can to be code compliant, yes, sir.

19 Q. I'm not questioning you about any code
20 compliance. Let's assume for the sake of this
21 argument that there is nothing that you built
22 that is prohibited by a building code. Now, I'm
23 not excluding a moral code. That's another
24 matter that we'll talk about maybe another day.

25 But as to the client coming to you and

1 hiring you to design something, if I want a boat
2 shed; and I hire you to do that for me, and you
3 draw it and bring it to me on a plan and it shows
4 a 10-foot wide boat shed. And I say, "Oh, no.
5 It's permissible where I live to build a 20-foot
6 wide boat shed. I don't want a 10-foot wide boat
7 shed. I want 20 feet," are you saying that's
8 LS3P's call or my call?

9 MR. STAIR: Object to the form.

10 A. It's your call.

11 Q. Certainly.

12 And if you want to bill me for your
13 services, you're going to have to render the
14 services I want or refuse to do that and not
15 build it; correct?

16 MR. STAIR: Object to the form.

17 A. Correct.

18 Q. So had Bishop England called you up and
19 said, "Take these viewing windows out. These
20 children are going to be naked in this room,"
21 would you have taken them out of the design?

22 A. Most likely, yes, sir.

23 Q. Well, I mean, how -- okay. You can't
24 say it any more definitively than that? "Most
25 likely"?

1 A. If they asked specifically to take the
2 window out, the answer is, yes, the window would
3 have come out.

4 Q. Either that or you're going to lose -- I
5 don't know what it was -- \$12 million project or
6 something -- however it was a lot. To me. To me
7 it's a lot.

8 MR. STAIR: Object to the form.

9 MR. DUKES: Same objection.

10 Q. Yeah. To Mr. Stair, that's not a lot,
11 perhaps. But, to me, it seems like a lot.

12 MR. STAIR: If you don't mind my
13 intruding into the deposition, that is a lot to
14 me too, sir. And let the record reflect we've
15 all smiled and grinned on that one.

16 Q. Who picked the type of blind that would
17 go on these windows?

18 A. Specifically who, I can't answer. I'm
19 not sure.

20 Q. Did LS3P select that or did Bishop
21 England select that, the Diocese select that?

22 A. Generally, what blinds go in school or
23 mini blinds -- and this is just, kind of, a
24 standard blind that goes in a window.

25 Q. So who chose it?

1 A. Probably LS3P.

2 Q. And did Bishop England have to sign off
3 on your selection as opposed to putting a
4 shade -- solid shade controlled by those rope-
5 like things on the side? Did they have to
6 approve the selection of the blind that you
7 chose?

8 A. Yes.

9 Q. Yeah. Okay. Now, have you talked to
10 anybody at or representing any of the defendants
11 named in the caption here, those -- we refer to
12 them as the "Diocese defendants" just among us,
13 either the Diocese or the high school itself,
14 which is a part of the Diocese?

15 A. No.

16 Q. And has anybody at LS3P had such
17 conversations?

18 A. I'm not aware of any.

19 MR. STAIR: Object to the form.

20 Q. And your friend, Mr. Aichele, does he
21 still live just down the street here where he
22 lived the last time you were here?

23 A. I believe so.

24 Q. Do you know how far that is from this
25 office?

1 A. I do not.

2 Q. Back at your house again. Are you aware
3 or have you ever seen or been told that Bishop
4 England High School answered our
5 interrogatories -- in a part of their answers to
6 our interrogatories naming LS3P as the architects
7 and the primary contractor being Gulf Stream
8 Construction? Are you aware they did that?

9 A. No, sir.

10 Q. They begin that answer by saying, "The
11 Diocese relied on the expertise of architects,
12 builders, and others." They don't identify the
13 others, and they'll get a chance to.

14 But I just wondered if you have dealt
15 with the people at Gulf Stream Construction at
16 all about this litigation and the issues
17 concerning the windows?

18 A. No, sir.

19 Q. Gulf Stream Construction was the general
20 contractor, wasn't it?

21 A. I believe so, yes, sir.

22 Q. So it would have been Gulf Stream's
23 responsibility, wouldn't it, to locate the
24 windows or engage a subcontractor or a provider
25 of windows, purveyor of windows, to supply the

1 windows for this project; correct?

2 A. Correct.

3 Q. And y'all -- did y'all sign off on that
4 kind of stuff? Who's selected as a general,
5 who's selected as a subcontractor?

6 A. I don't believe that's LS3P's
7 responsibility, no, sir.

8 Q. Yeah. That's the person who's hiring,
9 the entity who's hiring you. I think I hear --
10 is what I hear you saying; is that right?

11 A. That was between the Diocese and Gulf
12 Stream.

13 Q. Yeah. Okay.

14 Now, I'd like to -- do you -- are you
15 familiar with the term "throwing somebody under
16 the bus"? Have you ever used that term?

17 A. I'm familiar with it, yes, sir.

18 Q. What do you understand it to mean?

19 A. Blaming somebody else.

20 Q. And you have any opinion as to whether
21 the Diocese is trying to throw LS3P -- the
22 Diocese and all of the defendants in the case --
23 are trying to blame LS3P for this problem?

24 A. I do not.

25 MR. STAIR: Object to the form.

1 Q. You don't have that opinion?

2 MR. STAIR: Object to the form.

3 A. I don't have an opinion. You asked if I
4 have an opinion they're trying to do that, and I
5 don't have an opinion on that.

6 Q. Any opinion on that?

7 MR. STAIR: Object to the form.

8 Q. Is that what you're saying? You don't
9 have any opinion on that?

10 MR. STAIR: Object.

11 A. And the way, the manner I understood you
12 to ask the question, my response is I don't have
13 an any opinion on that.

14 Q. I have to make sure we're communicating
15 in an understandable way with each other. So let
16 me drop back, and I'll try to word it as
17 absolutely clearly as possible.

18 Just a moment ago I discussed with you
19 the fact that, in their responses, they have --
20 and in their answer -- they have identified
21 relying upon the advice of professionals
22 regarding what? Regarding the design and
23 construction of Bishop England High School.

24 And then I further discussed with you
25 their writing where they say specifically --

1 'cause I wanted names. I can't go shooting in
2 the dark. I wanted names where they specifically
3 identified LS3P as being the architects and Gulf
4 Stream Construction as being the construction
5 professionals they're -- they relied on, and they
6 used the word "and others." That lets them think
7 of somebody else somewhere down the line. They
8 might want to add somebody else.

9 But you and I were discussing the term
10 "throwing someone under the bus," and you said
11 you understand that to mean putting the blame or
12 trying to put the blame for some act on someone
13 else; correct?

14 A. Correct.

15 MR. STAIR: Object to the form.

16 MR. DUKES: Object to the form.

17 Q. I asked you if you felt that's what the
18 defendants were doing to LS3P in their written
19 responses, and you said you didn't have an
20 opinion about that.

21 MR. STAIR: Object to the form.

22 MR. DUKES: Same objection.

23 A. I think you asked it differently the
24 first time. You asked me if I had an opinion as
25 to whether the Diocese was trying to do that to

1 LS3P.

2 Q. Yeah.

3 A. And my response was I don't have an
4 opinion. Now, if you're asking do I understand
5 that's what they're trying to do? The way you
6 have worded the question, the answer would be
7 yes.

8 Q. The last wording was more clear to you?

9 A. Well, it's a different meaning than what
10 you asked the first time.

11 MR. STAIR: Object to the form.

12 A. You've asked two different questions.

13 Q. I understand exactly what you're saying.

14 I just need you to be clear in your
15 answer that you're answering that question that
16 you do think -- if you do, you do think that's
17 what Bishop England and the Diocese defendants in
18 this case is undertaking, trying to do.

19 MR. STAIR: Object to the form.

20 A. I have not read the responses of Bishop
21 England. So Bishop England is saying they relied
22 on professionals to design and construct their
23 school, which I would agree with. Yes, they
24 have.

25 Q. Okay.

1 A. That's why you hire an architect.
2 That's why you hire a contractor. Because if
3 Bishop England had all those services in-house,
4 they would not need LS3P. They would not need
5 Gulf Stream Construction.

6 Q. And they don't -- the Diocese knows a
7 lot about how to abuse children, but they
8 wouldn't have had to ask LS3P.

9 MR. DUKES: Object to the form.

10 Q. But that's what you're --

11 A. That's not even close to what I'm
12 saying.

13 MR. DUKES: Object to the form.

14 Q. And are you or not of the opinion that
15 the defendants in this case are trying to
16 defect -- deflect blame to, in your particular
17 case, LS3P, the architects on the project?

18 MR. STAIR: Object to the form.

19 MR. DUKES: Same objection.

20 A. I understand that's what you are trying
21 to interpret what that answer to that
22 interrogatory is trying to say. That's what you
23 have explained to me.

24 I have not read that. I do not have the
25 ability to make an opinion as to -- about what

1 Bishop England is trying to do. You probably
2 need to ask Bishop England or the Diocese.

3 Q. Any particular person you think I should
4 ask?

5 MR. STAIR: Object to the form.

6 A. I don't have any clue who you should
7 ask.

8 Q. Do you have any opinion about who the
9 most truthful person is there?

10 MR. STAIR: Object to the form.

11 MR. DUKES: Object to the form.

12 A. I do not.

13 Q. Let me just -- do you know Robert
14 Guglielmone, the Bishop of Charleston?

15 A. I do not.

16 Q. Let me show you --

17 MR. RICHTER: Y'all want another
18 copy of the answers of the interrogatories --
19 first set of interrogatories?

20 MR. DUKES: Unnecessary for me.

21 MR. STAIR: It is necessary for me,
22 yes.

23 MS. RICHTER: There you go.

24 MR. RICHTER: Next in line, please.

25 (Exhibit No. 07 was marked for

1 identification.)

2 Q. Let me hand you, please, what's been
3 marked as Plaintiff's Exhibit No. 07 to your
4 deposition, please, and ask you if you recognize
5 that as being a copy of the Defendant Bishop
6 England High School's answers to the plaintiff's
7 first interrogatories.

8 MR. STAIR: Larry, he has not seen
9 this. We've not been notified this will be a
10 subject of conversation. So I want to --

11 MR. RICHTER: Take as much time as
12 you need.

13 MR. STAIR: Yeah, well --

14 MR. RICHTER: Sure.

15 MR. STAIR: -- you want to tell me
16 which numbers you want to talk about to expedite
17 the --

18 MR. RICHTER: Well, I'm going to
19 talk about as many as I need to; but I'm going to
20 start with No. 1. And hopefully we can limit
21 ourselves to No. 1.

22 MR. STAIR: I mean, do we need to
23 look at the rest of them?

24 MR. RICHTER: I don't think so
25 but --

1 MR. STAIR: Well, I don't want to
2 spend time doing it if I don't need to, if you're
3 going to ask about No. 1. If you're going to ask
4 about the others, then tell me that; and we'll
5 step back out.

6 MR. RICHTER: Yeah, I'm going to
7 look through these -- please let me just answer
8 your question, please.

9 I'm going to look through this --
10 the others while you are discussing that No. 1
11 with this witness; and I will probably ask him as
12 many as is required to get him to a point that he
13 has a full enough knowledge base to be able to
14 say, "Oh, yes, I recognize they're trying to
15 throw us under the bus." Or, "No, they're not
16 trying that" --

17 MR. DUKES: Object to the form.

18 MR. RICHTER: That's what I hope to
19 get to.

20 MR. STAIR: I'm aware of our time
21 desires here, and I want to be as efficient as I
22 can; but I don't want to look at these
23 unnecessarily but --

24 MR. RICHTER: I hope it's not
25 necessary. I hope it's just that No. 1.

1 MR. STAIR: Okay. We'll look at
2 No. 1; and if, while we're out, you determine
3 there are others --

4 MR. RICHTER: I'll let you know.

5 MR. STAIR: -- let me know what
6 they are. We'll look at those too.

7 MR. RICHTER: I'll let you know
8 that.

9 MR. STAIR: We can discuss those.

10 MR. RICHTER: Uh-huh.

11 (Recess taken 12:18 p.m. to 12:34 p.m.)

12 (Exhibit No. 08 and Exhibit No. 09 were
13 marked for identification.)

14 MR. RICHTER: Let's go back on the
15 record here.

16 BY MR. RICHTER:

17 Q. I am going to hand back to you Exhibit
18 No. 07 to your deposition, which the reporter has
19 marked, and ask you if you've had an opportunity
20 to review that.

21 A. I read Question 1.

22 Q. Yeah. And I want to ask you about
23 Question 1. Can you identify what that document
24 is, please?

25 A. Bishop England High School's Answers to

1 the Plaintiffs' First Interrogatories.

2 Q. Now, Interrogatory No. 1 --
3 Interrogatory No. 1, I'd like to call your
4 attention, please, to the answer to Interrogatory
5 No. 1. I'll read the interrogatory and ask you
6 to read the answer. Maybe that's an easy way to
7 get it into the record.

8 Question, interrogatory, "Whose idea was
9 it to install the windows between the coaches' or
10 athletic department offices and the various
11 locker rooms and dressing rooms at Bishop England
12 High School and any other window capable of being
13 used to view less than fully clothed persons when
14 the school was constructed on Daniel Island?"
15 Then they answered that.

16 Would you mind publishing their --

17 MR. DUKES: Object to the form.

18 Q. -- answer, please?

19 MR. DUKES: Object to the form.

20 A. "The Diocese relied on the expertise of
21 architects, builders, and others for the design
22 and construction of the building and the
23 installation of certain measures to ensure the
24 safety of students. The architects were LS3P.
25 The primary contractor was Gulf Stream

1 Construction."

2 Q. Thank you. That's all for seven.

3 Now I'm going to hand over to you,
4 please, sir, what has been marked by the reporter
5 as Exhibit No. 08 to your deposition and ask you
6 if you could tell us, please, what that purports
7 to be or what it is?

8 A. Robert -- I don't know how you pronounce
9 his last name.

10 MR. DUKES: Guglielmone.

11 THE WITNESS: Guglielmone.

12 MR. DUKES: Guglielmone.

13 A. Guglielmone. Okay. Individual's
14 Answers to the Plaintiff's First Interrogatories.

15 Q. The first one of those that I want to
16 ask you about is a portion, actually, of No. 1.
17 The question to No. 1, as we did a moment ago,
18 Mr. Guglielmone, "Give the names, addresses, and
19 telephone numbers, and emails addresses of
20 persons known to responding defendant or
21 defendant's counsel to be witnesses concerning
22 the facts of the case and indicate whether or not
23 written or recorded statements have been taken
24 from the witnesses and indicate who has
25 possession of such statements."

1 And now if you'll give us the answer, at
2 least down through B, on page 2, please.

3 A. "Bishop Guglielmone objects to the
4 Interrogatory No. 1 to the extent plaintiff seeks
5 information that is beyond that which is required
6 for the Court to determine issues related to
7 class certification under Rule 23 Federal R Civ.
8 P. Subject to the objection, the Bishop believes
9 the following individuals and companies may have
10 knowledge regarding Bishop England High School.
11 LS3P Architects designed the Bishop England High
12 School building and may have managed the
13 construction process. Employees of LS3P may have
14 knowledge regarding the company's activities
15 related to the design and construction. Gulf
16 Stream Construction built the structure."

17 Q. Thank you.

18 Now, I want to go on with that for just
19 a moment, please, and ask you: Do you see in
20 their answer a response to the address of LS3P or
21 Gulf Stream --

22 MR. DUKES: Object to the form.

23 A. In Question No. 1 you're asking?

24 Q. Yes.

25 A. I do not.

1 Q. And do you see a telephone number or
2 numbers for anybody named by the responding party
3 to No. 1?

4 A. I do not.

5 Q. And do you see an email address of
6 persons known to the responding defendant or
7 defendant's counsel to be witnesses concerning
8 the facts of the case?

9 A. No.

10 Q. And do you see any indication of whether
11 or not a written or recorded statement has been
12 taken from the witnesses and indicate who has
13 possession of such statements?

14 MR. DUKES: Object to the form.

15 A. No.

16 Q. Do you know of any reason why the Bishop
17 of Charleston has the right to ignore the Federal
18 Rules of Civil Procedure which require him to
19 answer under oath interrogatories?

20 MR. STAIR: Object to the form.

21 MR. DUKES: Object to the form.

22 A. No.

23 Q. Thank you. That's the end for that one.

24 And then I'd like to call your attention
25 to what's marked as No. 09, please, and tell you

1 that that is the answer of the defendants as it
2 is labeled on the front.

3 Do you see that?

4 A. I do.

5 Q. That answer means that's their response
6 to our complaint by which we brought this
7 lawsuit.

8 And I call your attention to what the
9 defense has captioned -- the first defense
10 they -- the defendants describe as -- looks like
11 Roman Numeral I or I, capital, overview of this
12 action. And then they say paragraph No. 1.

13 Do you see that on the first page?

14 A. Yes.

15 Q. And let's ask you, please, to publish
16 their paragraph 1 of their answer to our
17 complaint.

18 MR. DUKES: Object to the form.

19 Q. Do you see where it says "Diocese admits
20 only"?

21 A. You're asking me to read it?

22 Q. Yeah, if you can. I can read it, if you
23 want.

24 MR. STAIR: I don't think he
25 understands what "publish" is. He doesn't

1 understand what your question -- what "publish"
2 means. Yes, he wants you to read it.

3 Q. Yeah, yeah, please.

4 MR. DUKES: Object to the form.

5 A. "The Diocese admits only that Bishop
6 England was designed with the safety of students
7 and visitors in mind and that the locker room
8 windows were a safety feature to allow adults to
9 monitor the changing areas for bullying,
10 fighting, or other misbehavior. The Diocese
11 relied on the advice of professionals regarding
12 the design and construction of Bishop England
13 High School. The design complied with the
14 relevant standard of care and comported with
15 safeguarding the safety of those using the locker
16 rooms. All remaining allegations contained in
17 paragraph 1 are denied."

18 Q. Thank you.

19 Let me ask you this: Do you remember
20 the tobacco litigation?

21 MR. DUKES: Object to the form.

22 Q. The suit against the tobacco industry?

23 MR. DUKES: Object to the form.

24 A. No, sir. I -- that was before I even
25 thought about doing legal issues or being

1 involved in legal issues. No, I didn't pay any
2 attention to tobacco.

3 Q. Are you aware that the tobacco companies
4 denied inducing people to ingest the smoke,
5 certain substances, nicotine included?

6 MR. DUKES: Object to the form.

7 A. I have not read information that would
8 lead me to have an opinion or understanding of
9 what the tobacco companies did or didn't do, but
10 I believe what you said to be -- 'cause I have no
11 reason to doubt what you said.

12 Q. Thank you.

13 MR. DUKES: Object to the form.

14 Q. And -- well, that's all for that.

15 Now, let's go on to some --

16 (Exhibit No. 10 was marked for
17 identification.)

18 Q. I'm going to hand over to you what the
19 reporter has marked as Exhibit No. 10 to your
20 deposition and ask you to look at the top and see
21 if you can recognize this as an email from Kent
22 Stair, who's seated to your right, to me. And
23 there's a date on it. If you'll publish the date
24 too, please.

25 MR. STAIR: Before you answer, he's

1 not seen that. So I want to go out and discuss
2 it with him.

3 MR. RICHTER: You want to do what?

4 MR. STAIR: He's not seen it. So I
5 want to go out and discuss it. We weren't
6 notified about it. Come on, Roger.

7 MR. RICHTER: Okay. That's fine.
8 Please read it.

9 (Recess taken 12:48 p.m. to 12:56 p.m.)

10 MR. RICHTER: Let's go back on the
11 record, please, madam reporter.

12 BY MR. RICHTER:

13 Q. You have before you what has been marked
14 as Plaintiff's Exhibit No. 10 to your deposition;
15 and you have, I believe, now read it cover to
16 cover, so to speak.

17 A. Correct.

18 Q. Had a chance to discuss it with your
19 lawyer. And what -- did you discuss it with
20 anyone else, first of all?

21 A. This email?

22 Q. Yeah.

23 A. No. This is the first time I've seen
24 this email.

25 Q. Even -- you've never seen this before?

1 A. I have not. When you handed it to me is
2 the first time I've seen this email.

3 Q. Do you know why that is? Why you didn't
4 previously have a copy of it?

5 A. No, sir. No, sir.

6 Q. Did you see your name throughout this
7 email?

8 A. Yes.

9 Q. And would you tell us, please, what the
10 email purports to discuss? Let me make the
11 record right first. Anna's reminding me.

12 Is this an email, Exhibit No. 10, from
13 Kent Stair on Sunday, July the 11th. It's
14 dated -- 2021 at 12:44 p.m. to me and copying a
15 number of people but not copying you; correct?

16 A. Yes.

17 Q. And the subject matter is LS3P 30(b)(6)
18 deposition and number for the case is involved.

19 Now, would you tell us, please, what you
20 understand this email to say?

21 A. This is an email, I think, explaining to
22 you what transpired on my ride home from the
23 deposition that occurred whenever our first
24 deposition was 'cause I -- when I left the
25 deposition, I called John Works to tell John

1 Works what had just transpired.

2 Q. And say, again, in the record, please,
3 who John Works is.

4 A. John Works is our in-house.

5 Q. He's in North Carolina?

6 A. He's in Charleston.

7 Q. Charlotte?

8 A. Charleston.

9 Q. Charleston. I'm sorry. He is a South
10 Carolina lawyer?

11 A. Yes, sir, he is.

12 Q. Okay.

13 A. And John asked if the deposition had
14 ended. I said, "Well, I'm not real sure." Kent
15 had asked you if the deposition had been
16 terminated, to which you never responded. You
17 had told me that I will be back again.

18 And that's when John said to me, "We
19 can't talk about it. We can't talk about the
20 deposition. It's still ongoing. The
21 deposition's still -- it's not ended. We can't
22 talk." I said, "Okay." So that ended.

23 So I called Kent on the ride home to try
24 to understand why. What's -- what's the rule
25 about not being able to talk to someone until the

1 deposition is over? And Kent eventually told me
2 it's called coaching. "In South Carolina there's
3 a rule about you can't coach a witness during the
4 deposition. So you and I can't speak, and you
5 can't speak to anybody about this deposition
6 until it ends."

7 And I was trying to understand why, and
8 that's what this -- this -- those phone calls
9 were for that I made. Trying to understand what
10 it was I could and couldn't do and why I
11 couldn't -- I couldn't do that. So that's what
12 this is about.

13 Q. And under the entry Thursday, July 8,
14 Mr. Stair summarizes to me or describes to me in
15 this email your various -- or his various
16 contacts back and forth with you subsequent to us
17 leaving the deposition room on that -- the day of
18 your deposition.

19 And he says to me in this email, "I told
20 him that you were going to file some motion with
21 the Court." Do you see that? And do you
22 understand that?

23 A. Paragraph 3?

24 Q. No. 2.

25 A. Paragraph 2?

1 Q. Yeah.

2 A. Yes.

3 Q. He says, "On Thursday, July the 8th" --

4 A. Yeah.

5 Q. -- "I told him that you were going to
6 file some motion with the Court."

7 Is that what Mr. Stair told you in that
8 conversation?

9 A. That's what you told me before we left
10 the deposition. You made that statement standing
11 right over there. By the lion. (Indicating.)

12 Q. In this email that Kent Stair wrote to
13 me, do you not understand this to say, "These
14 communications were as follows: Thursday,
15 July 8, as you, Mr. Attanasio, and I, Kent Stair,
16 were leaving your offices shortly before noon" --
17 so he's given us a date. He's given us a time.
18 He's identified who was part of the conversation,
19 and who he's identified is you and him having a
20 conversation.

21 Do you understand that?

22 A. Yes, sir.

23 Q. And what he says is: "I," Kent Stair,
24 the author of this writing, "told him that you,"
25 me, the recipient of the writing, "were going to

1 file some motion with the Court."

2 Do you not understand that that's what
3 it says?

4 A. I do understand that's what it says,
5 yes.

6 Q. And that we would be returning to
7 complete the deposition some time in the future.

8 Do you understand what that means?

9 A. Yes, sir.

10 Q. "I told him that if the Court provided
11 further/different instructions as to his
12 testimony, he would presumably be advised of that
13 in some appropriate way but that, in the
14 meantime, we cannot discuss his testimony."

15 Do you agree that that is an accurate
16 summary of your conversation as Mr. Stair has
17 described it as you were leaving this building?

18 A. Yes, sir.

19 Q. And he characterizes it being a short
20 conversation. No more than a couple of minutes.

21 Do you agree with that characterization
22 as well?

23 A. Yes, sir.

24 Q. Thank you.

25 The next paragraph deals with Thursday,

1 same day, July the 8th, at 11:59 a.m. to
2 12:01 p.m. Do you see that?

3 A. Yes, sir.

4 Q. And the email says that you, Attanasio,
5 "telephoned Works and said the deposition was
6 done. Attanasio then told Works examples of
7 questions by Richter."

8 Did that happen?

9 A. Yes, sir.

10 Q. Do you remember what those examples
11 were?

12 A. No, sir.

13 Q. "Attanasio's response to those
14 questions" -- you told him how you responded to
15 those questions as well, didn't you?

16 A. I may have, yes, sir. I don't recall
17 exactly what I said to John.

18 Q. "And Stair's objections." You told him
19 what Mr. Stair did by way of objection; correct?

20 A. Yes, sir.

21 Q. "Attanasio followed with comments by
22 Richter about why Aichele was not the witness."
23 You went on speaking to Mr. Works and apparently
24 said something to him that you had understood me
25 to say why Aichele was not there or why was he

1 not there; right? Is that what that means?

2 A. Well, you asked me why Eric was not here
3 as a 30(b)(6) witness, like you did today.

4 Q. Yeah. I don't think I asked you that
5 today, did I?

6 A. (Nods head.)

7 Q. "Attanasio, then, told Works that
8 Richter would speak with the judge and would
9 speak with Attanasio again."

10 Where did you get that understanding
11 from?

12 A. From you.

13 Q. "And without having offered any
14 substantive comment to what Attanasio had said --
15 Works asked Attanasio if deposition -- if the
16 deposition was over or suspended for the day."

17 Did you understand what that meant?

18 A. Yes, sir.

19 Q. And what was your understanding?

20 A. I wasn't sure, to be honest with you,
21 because, again, Kent asked you a couple of times,
22 "Are you terminating the deposition?" And you
23 never responded. So I didn't know the difference
24 between us "leaving" the deposition and what
25 "termination" meant.

1 Q. I'm going to hand you a copy of the
2 transcript of your deposition before that was
3 asked the last time -- the first time you were
4 here, and it's marked as No. 11 to your
5 deposition.

6 (Exhibit No. 11 was marked for
7 identification.)

8 Q. Thank you.

9 MR. STAIR: Larry, he has not seen
10 this either; and I want to talk to him about it.
11 But, obviously, it's a long document. Is there
12 any portion that we should discuss so we can save
13 some time?

14 MR. RICHTER: Yeah. I think
15 that -- I think that he was the deponent in this,
16 first of all, in terms of him not being familiar
17 with it. He made it.

18 Where did Rich go?

19 MR. HALVERSEN: He said to keep
20 going.

21 MR. RICHTER: Okay. He made the
22 deposition. So, No. 1, the idea that he's not
23 familiar with it, we do not agree with; but if
24 you want to take a break to help him along or to
25 look at the document with him or whatever you

1 want to do with him, I don't mind certainly you
2 doing that.

3 Same thing's happening that
4 happened before though. A lot of time is being
5 expended because of -- previously objections, now
6 discussions with the witness, who I have to show
7 documents to to extract a truthful answer and an
8 accurate answer; but that's fine.

9 MR. STAIR: I object as to what you
10 just said; but under the local rules concerning
11 discovery, if you're going to show him an exhibit
12 and he hasn't seen it before, I get a right to
13 ask him about it, talk to him about it. So
14 that's what we're going to do.

15 MR. RICHTER: Have at it.

16 MR. STAIR: Okay. What section do
17 you want to talk about?

18 MR. RICHTER: Whatever you want to
19 go over with him. You're free to do that.

20 MR. STAIR: Again, it's a lengthy
21 document.

22 MR. RICHTER: Yeah.

23 MR. STAIR: I'm trying to save
24 time, not waste time.

25 MR. RICHTER: Well, I'm going to --

1 I'm only going to go over, actually, I hope, very
2 little bit of it, assuming I get ---

3 MR. STAIR: I guess we'll focus on
4 that, and then we'll come back.

5 MR. RICHTER: -- an accurate answer
6 from the witness.

7 MR. STAIR: Okay.

8 MR. RICHTER: And that will be
9 70 -- page 75 through the end.

10 MR. STAIR: Okay.

11 MR. RICHTER: And we'll cool our
12 heels till you do get back.

13 (Recess taken 1:09 p.m. to 1:13 p.m.)

14 BY MR. RICHTER:

15 Q. You have before you now what has been
16 marked as Plaintiff's Exhibit No. 11 -- Exhibit
17 No. 11 to your deposition, which has, you'll see,
18 on the first page is the transcript of the
19 partial deposition that was given by you back
20 on -- I don't know the date.

21 MS. RICHTER: I think it was
22 July 8.

23 A. July 8.

24 Q. July 8. I see it right there in front.
25 Now, a moment ago you said that I never

1 responded to a statement or a question, "Are you
2 terminating the deposition?"

3 Do you recall saying that?

4 A. I do.

5 Q. And do you still stand on that testimony
6 given under oath?

7 A. This record of my deposition says you
8 responded to Mr. Stair asking, are you
9 terminating it by saying, "He is terminating it
10 by refusing to answer the question." That's what
11 it says.

12 Q. That's not what you said. You said --
13 you -- "and you never responded."

14 A. That's what I said 'cause I -- I didn't
15 recall that 'cause you stood there when he asked,
16 "Are you terminating it?" And you didn't look at
17 Mr. Stair and respond. I don't remember you
18 saying, "He's terminating it by refusing to
19 answer the questions."

20 Q. Do you agree that your statement "and
21 you never responded" is not truthful?

22 MR. STAIR: Objection to form.

23 MR. DUKES: Object to the form.

24 A. It's not accurate based on my reading of
25 this transcript.

1 Q. You want to correct it?

2 A. You responded to Mr. Stair -- yes, I
3 want to correct it. You did respond by saying,
4 "He is terminating it." And I assume by "he,"
5 you mean Roger Attanasio. "Is terminating it by
6 refusing to answer the question."

7 Q. And that is on page 75 line what?
8 Line -- around line 13, let's say.

9 A. 18.

10 Q. Well, Mr. Dukes says at line 13. So
11 you're terminating his deposition is the
12 question. Do you see that?

13 A. Yes, sir.

14 Q. And I respond to that, do I not, in your
15 presence?

16 A. You did, but that doesn't answer the
17 question.

18 Q. Was that response to Mr. Dukes'
19 statement -- "so you're terminating the
20 deposition" -- was that made in your presence
21 that day?

22 A. Yes. But my understanding was that was
23 not a response to the question asked by
24 Mr. Dukes. You didn't -- you didn't say yes or
25 no to terminating the deposition.

1 Q. What did I say? I said you were
2 terminating --

3 A. You said, "I can't go forward. He won't
4 answer the question."

5 Q. That's right.

6 A. And Mr. Stair said, "You're terminating
7 it?" And you said, "He is terminating it by
8 refusing to answer the question."

9 Q. Yeah. But you testified under oath
10 today that I didn't respond when Mr. Stair --

11 A. That's what I recall, Mr. Richter.

12 Q. But you corrected that now?

13 A. I did, by reading the transcript.

14 Q. How many times has that happened today?

15 MR. STAIR: Object to the form.

16 MR. DUKES: Object to the form.

17 A. Correcting it by reading the transcript?
18 Once.

19 Q. No. Misstating things.

20 MR. STAIR: Object to the form.

21 MR. DUKES: Object to the form.

22 A. I don't recall.

23 Q. Are you prepared now to say that I, in
24 fact, did respond to Mr. Dukes' and Mr. Stair's
25 statement concerning terminating the deposition?

1 A. Not directly.

2 Q. Did you -- by the way, since we referred
3 to Judge Gergel's order earlier and he said he
4 read the whole transcript, this is what he's
5 talking about, just for your clarification.

6 MR. DUKES: Object to the form.

7 Q. So you can know what that reference
8 meant in his order.

9 MR. STAIR: Object to the form.

10 Q. And we went on and had a more full
11 discussion concerning your failure to respond in
12 a responsive way and your refusal -- and either
13 directly or by your counsel -- to answer various
14 questions.

15 MR. STAIR: Object to the form.

16 Q. And your, as a witness, somehow asking
17 questions and making legal statements that the
18 question was an improper question.

19 Do you remember all that or not?

20 MR. STAIR: Object to the form.

21 MR. DUKES: Object to the form.

22 A. I'm -- I'm not following what you're
23 asking me. Did I make comments -- I made
24 comments that I thought it was beyond the scope
25 of the deposition, and then we got to the end

1 and -- and you said, as it says here, that I
2 can't go on because he's not answering my
3 questions.

4 And you said to me -- oh, I recall you
5 saying to me. "I'll see you again. You'll be
6 back."

7 Q. Can you show me here --

8 A. That's what I recall you saying. That's
9 what I remember, but I don't see that.

10 Q. So did you imagine that or what?

11 MR. STAIR: Object to the form.

12 A. Maybe I did. Maybe that's what I
13 understood you to say.

14 Q. But you agree now that the transcript of
15 the deposition does not reflect that?

16 MR. STAIR: Object to the form.

17 MR. DUKES: Same objection.

18 A. Yes, sir.

19 Q. Thank you. Now --

20 A. Although, it's quite possible it
21 occurred because on line -- page 76 line 21, you
22 wrote -- you said, "The deposition is" -- and it
23 said, "More than one person spoke at the same
24 time." So I don't know what you said. Again,
25 what I heard could have been said. The court

1 reporter may not have heard it.

2 Q. Or it could have been somebody else?

3 A. Quite possibly. Yes, sir.

4 Q. Thank you.

5 I want to go on through this email
6 'cause I want to understand clearly about the
7 conversations you've had or attempts to have
8 conversations about your testimony with your
9 lawyer while you were still a deponent in this
10 matter.

11 When you made comments to Mr. Works on
12 July the 8th at 11:59 to 12:01 p.m., did you --
13 do you remember what you said to him about what
14 Mr. Stair refers to as -- and I'm quoting --
15 comments by Richter about why Aichele is not the
16 witness?

17 A. I do not.

18 Q. Do you remember what Mr. Works said in
19 that regard?

20 A. Mr. Works didn't say much. Mr. Works
21 did a lot of listening.

22 Q. Can you answer my question, please?

23 A. Repeat your question again.

24 Q. Question is: When you made comments to
25 Mr. Works on July 8th at 11:59 to 12:01 p.m., did

1 you -- do you remember what you said to him about
2 what Mr. Stair's referred to as -- and I'm
3 quoting -- comments by Richter about why Aichele
4 was not -- it says the answer but the witness is
5 the proper --

6 A. No, sir, I don't.

7 MR. STAIR: Object to the form.

8 A. I don't recall exactly the conversation
9 you had with John that day.

10 Q. And it goes on to say that Attanasio --

11 A. Attanasio.

12 Q. Attanasio. Attanasio.

13 MR. STAIR: Long A.

14 MR. RICHTER: It's like
15 Guglielmone. It's hard to -- somebody doesn't
16 know you well will use that a lot to fall into
17 getting that out of your -- out of that person's
18 mouth.

19 MR. STAIR: Think long A.

20 MR. RICHTER: Yeah. Well, at the
21 end it does; but following vowels clearly make
22 the A --

23 MR. STAIR: Whatever is something
24 opposite. Long is the first two and long is
25 next.

1 Q. "Attanasio then told Works that Richter
2 would speak to the judge and would speak with
3 Attanasio again. Without having offered any
4 substantive comment as to what Attanasio had
5 said, Works asked if the deposition was over or
6 suspended for the day."

7 Do you recall that part of that
8 conversation?

9 A. Uh-huh. (Nods head.)

10 Q. Is that accurate what happened?

11 A. Uh-huh. (Nods head.)

12 Q. Attanasio then -- I'm sorry. "Attanasio
13 said the deposition was terminated and would be
14 continued after Richter spoke with the judge."

15 Did you say that?

16 A. I don't recall but -- but something to
17 that effect. You know, to me, I was puzzled by
18 why Kent asked, "Is the deposition terminated?"
19 What's the difference between "terminated" and
20 what happened in the manner that it ended?

21 I didn't understand there are different
22 meanings, which allowed you to talk to people
23 about it and different meanings where you're not
24 allowed to talk people. That's what I was trying
25 to understand. And Works was explaining to me,

1 "If it's not terminated, we can't talk. You
2 can't talk to anybody."

3 So I was trying to understand that.
4 That's what I was trying to comprehend.

5 Q. And that's what he told you?

6 A. Yes.

7 Q. I'm asking you -- I'm interested in this
8 because you have said -- or Mr. Stair says that
9 you have said certain things. And earlier
10 Mr. Stair said in the first paragraph we talked
11 about -- referring to July the 8th -- Mr. Stair
12 says, "I told him that you were going to file
13 some motion with the court."

14 Do you recall discussing that one?

15 A. Yes.

16 Q. "And that we would be returning to
17 complete the deposition some time in the future."
18 Do you remember Mr. Stair saying that in his
19 email?

20 A. I remember Mr. Stair saying that out the
21 front door, yes, sir.

22 Q. And clearly he said it here in the
23 email?

24 A. Yes, sir.

25 MR. STAIR: Object to the form.

1 Q. That means, don't you think, that
2 Mr. Stair knew that the deposition was going to
3 be reconvened, which conversely means that
4 Mr. Stair knew that his activities in the
5 deposition were violative of the rules and that
6 we would be sent back here to finish with you?

7 MR. STAIR: Object to the form.

8 Q. Do you understand that?

9 A. I understand it today based on what the
10 judge wrote, but I didn't understand it then.

11 Q. Okay.

12 A. May I also add?

13 Q. Sure.

14 A. You made the same statement to me
15 standing over there. (Indicating.)

16 Q. What statement is that?

17 A. "You will be back. I will see you
18 again."

19 Q. I think we probably said that before we
20 said good-bye, yeah.

21 A. No. This deposition -- I will be back.
22 We will continue -- you said --

23 Q. Yeah. At the end of the deposition --
24 right. We parted. And -- and that was correct,
25 was it not?

1 A. Yes, sir. Here we are.

2 MR. STAIR: Object to the form.

3 Q. Yeah. Which is the same thing Mr. Stair
4 said.

5 A. Yes.

6 Q. We'll be back another day?

7 MR. STAIR: Object to the form.

8 A. Yes.

9 Q. Now, if you look down to the next
10 paragraph, Thursday, July 8, he's reciting
11 contact with you 12/22 at 12:30. Well, contact
12 with Mr. Works.

13 I called -- "I," Kent Stair, "called
14 Mr. Works to tell him about the deposition
15 generally, and during the conversation he told me
16 about his brief conversation with Mr. Attanasio
17 and then told me that Mr. -- that Attanasio was
18 calling him again as we were speaking."

19 Do you see that?

20 A. I do, yes, sir.

21 Q. And do you understand the next sentence
22 to recite what Kent Stair, then, told Mr. Works?
23 "I told him not to answer and that I would call
24 Mr. Attanasio back immediately to tell him that
25 the rule against conversation applied to Works

1 also and to clarify that he should not speak with
2 anyone about his testimony during the break in
3 the action."

4 Did you get that call and that advice?

5 A. Yes, sir. There was several calls that
6 went back and forth because I was driving back to
7 Fort Mill.

8 Q. And that one, is that accurate -- an
9 accurate recitation of your call from Kent Stair
10 at approximately the time set forth there?

11 A. Yes, sir.

12 Q. Thank you.

13 Now, let's go to the next paragraph,
14 which deals with Thursday, July the 8th, at 12:30
15 to 12:33. And that says, "I," Kent Stair,
16 "called you," the witness, "back and told him of
17 my conversation with Works. I reiterated the
18 rule and clarified that it included Works as well
19 as everyone else; and I, again, told him we could
20 not discuss the deposition before it was
21 concluded. He asked for and I gave him a further
22 explanation of that rule."

23 Is that what happened?

24 A. Yes, sir.

25 Q. And what was the explanation you got

1 about the rule?

2 A. Coaching. I wanted to know why and the
3 rule about coaching.

4 Q. And that's what Mr. Stair --

5 A. Told me. It's about coaching. I wanted
6 to understand.

7 Q. I understand.

8 And it then says that you -- a few
9 moments later that same day, July 8 email,
10 "Mr. Works asking about the logic behind the rule
11 against attorney-client conferences during a
12 deposition which said nothing about the substance
13 of the deposition."

14 Is that accurate? That you called
15 Mr. Works at about 12:41 --

16 A. I don't know about the time.

17 MR. STAIR: Object to the form.

18 A. But, again, I was trying to understand
19 the logic behind the rule.

20 Q. I see.

21 A. I didn't understand it.

22 Q. And is it accurate that you said nothing
23 about the substance of the deposition to
24 Mr. Works in that telephone call?

25 A. That is accurate.

1 MR. STAIR: Object to the form.

2 Q. And Works did not respond to you. He
3 just was a dead telephone line or what?

4 MR. STAIR: Object to the form.

5 A. Mr. Works is -- Mr. Works is a rule
6 abider. So he knows he can't talk about the
7 deposition so he -- he doesn't respond to me.
8 It's easier not to respond than to try to explain
9 to me what was going on.

10 Again, I was trying to understand what
11 had just transpired. We'd left. It was kind of,
12 we'll say, not amicable that we left; and I was
13 trying to understand what's going on. That was
14 the whole purpose of these calls.

15 Q. And were you upset in some way?

16 A. No. I just wanted to understand.
17 Nobody can talk to me. I can't talk to anybody
18 else. Why? Well, what's going on? Tell me --
19 tell me the -- I don't do this for a living. I
20 don't understand. So I wanted to understand.

21 Q. You then, again, that same day at
22 12:58 p.m., 17 minutes later, Mr. Dukes -- I
23 mean, Mr. Stair says you called Works; but Works
24 did not answer or respond in any other way.

25 Does that mean he didn't answer the

1 phone?

2 A. I'm in my car driving home so trying not
3 to text. I'm trying to call somebody to get an
4 answer to my question. "Tell me. Please explain
5 to me what's going on, why I can't do this, why I
6 can't do that, why somebody can't talk to me, why
7 I can't talk to somebody else. What's happening?
8 What's the logic behind it?"

9 I wanted to understand the logic. I
10 wanted to understand the rule. Why?

11 Q. Did Works answer the phone when you
12 called him or not?

13 A. I don't think so.

14 Q. So does that -- you understand this
15 entry for 12:58 p.m. July the 8th to mean that he
16 didn't answer the phone or he just sat mute and
17 wouldn't answer your --

18 A. I don't think he answered the phone.

19 Q. Then at 12:58 on that same date to
20 1:03 p.m., Mr. Stair in his next paragraph says
21 that you called him and that he, Mr. Stair,
22 immediately told him we could not talk about his
23 deposition and that you said you understood.

24 Is that accurate or not?

25 A. Yeah. I mean, the next sentence says,

1 "Explained that the -- strict rules prohibit
2 coaching the witness during the course" -- that's
3 what I wanted to understand. What was the logic
4 behind not being able to talk?

5 Q. And is this the first explanation that
6 you got as to why you couldn't speak to someone
7 else?

8 A. I think so, yes, sir.

9 Q. Do you remember the beginning of the
10 deposition I said, "Look, you're now a testifying
11 witness. You can't talk to anybody"?

12 A. That's correct.

13 Q. That's your testimony in this
14 deposition?

15 A. That's correct.

16 Q. But you tried to disregard that and talk
17 about your deposition?

18 A. No. I tried to understand the logic to
19 why I couldn't talk to him.

20 MR. STAIR: Object to the form.

21 A. That's what this conversation was all
22 about. Why can't you talk to somebody? I don't
23 understand the definition between "suspended" and
24 "termination" and what those meant in terms of
25 the deposition.

1 And then as a result of that, why?
2 What's the logic for this in South Carolina?
3 Please explain it to me. That's what these phone
4 calls were about.

5 Q. The first conversation that you had with
6 Mr. Stair, as I understood it, took place just
7 outside my front door; is that correct? After
8 the deposition --

9 A. Yes.

10 Q. -- was recessed for that day?

11 A. Yes, sir.

12 Q. And that's when Mr. Stair told you that
13 I was going to be filing some motion with the
14 court and that we would be returning to complete
15 the deposition some time in the future; is that
16 right?

17 A. Yes, sir.

18 Q. And then he went on to say, "We cannot
19 discuss your testimony." That lasted, as
20 Mr. Stair characterized it here, just a couple of
21 minutes. But let's go on and get to the end of
22 this so we can move on to some other stuff that
23 we need to cover.

24 On Friday, July the 9th, Mr. Stair
25 memorializes that "Works returned a Teams call

1 from Attanasio. At the conclusion of the call
2 with Attanasio about a totally unrelated project
3 matter, Attanasio asked Works the purpose of the
4 rule against speaking about the deposition during
5 a break. Works responded that they could not
6 discuss the deposition during the break.
7 Attanasio would need to speak to Stair about
8 particulars of the rule; but, generally, the rule
9 prohibited witness coaching."

10 Is that the first time you heard the
11 word "coaching"?

12 A. Other than when Kent told me the day
13 before.

14 Q. Now, this next paragraph doesn't recite
15 a call that you -- this is just Mr. Stair stating
16 that he'd never in 45 years had a deposition
17 break up in the manner that this one did.

18 And that's the end of the -- that's the
19 end of the communication, other than him saying
20 that he trusted the court reporter to append this
21 explanatory email to the deposition she is
22 preparing; and that was the email. Thank you for
23 covering that?

24 MS. RICHTER: And now can we go to
25 lunch?

1 MR. RICHTER: Is it here?

2 MS. RICHTER: Yes.

3 MR. RICHTER: Well, help
4 yourselves, please.

5 (Recess taken 1:36 p.m. to 2:18 p.m.)

6 (Exhibit No. 12 was marked for
7 identification.)

8 BY MR. RICHTER:

9 Q. If you're ready to go, let me ask you,
10 again, as we resume, over the lunch break, did
11 you discuss your testimony with anyone?

12 A. No.

13 Q. Thank you.

14 Now, before you now is what has been
15 marked as Plaintiff's Exhibit No. 12 to your
16 deposition. I'm going to ask you to look at
17 that, please, and see if you can identify it as
18 being a brochure or packet from LS3P about high
19 school projects that LS3P has been involved in
20 one way or another?

21 A. Yes, sir. I would term it "marketing
22 material."

23 Q. "Marketing material" is probably the
24 professional reference to it.

25 And what's it -- what's its purpose?

1 A. Most of the time it's in response to an
2 RFP where it talks about LS3P's experience with,
3 in this case, new schools; and it says "additions
4 and renovations," I believe.

5 Q. Yes. It says -- first category says new
6 schools. Second category on the front says
7 additions and renovations.

8 We received notification from Mr. Dukes
9 that he wants to take some photographs of a
10 number of schools. All those are public, aren't
11 they?

12 MR. DUKES: Uh-huh.

13 Q. All public schools here in the
14 Charleston County area, and I want to ask you if
15 you all --

16 MR. RICHTER: Rich, do you
17 remember? I can turn to the pages, and I can
18 find it. What I'd like to do is put in the names
19 of the school and ask you if you remember if that
20 is --

21 MR. STAIR: Which document are you
22 looking at, Larry?

23 MS. RICHTER: He hasn't entered it.

24 MR. RICHTER: It's a notice that
25 Rich sent out. You wouldn't have been provided

1 with a copy because you're not a party, but it's
2 various schools.

3 Q. Let me ask you, please, about the
4 following schools. Wando High School, West
5 Ashley High School, R.B. Stall High School, North
6 Charleston High School, Burke High School,
7 Charleston County School District 4 stadium.

8 Are all of those structures that were --
9 in which the architectural work, design, and
10 drafting were done by LS3P?

11 A. I can't --

12 MR. STAIR: Object to the form.

13 MR. DUKES: Same objection.

14 Q. What did you say?

15 A. I can't confirm that all of those that
16 you read were. Some of them I am confident of.
17 Others I am not.

18 Q. Tell me the ones you're confident about,
19 please.

20 A. West Ashley, Wando. If you go on to
21 another one, I'll answer yes or no whether I'm
22 confident or not confident.

23 Q. You can -- I'll share this with you.
24 It's just the list there on the front.

25 (Indicating.)

1 A. Those are the only ones I'm confident
2 of.

3 (Exhibit No. 13 was marked for
4 identification.)

5 Q. Before you now is what has been marked
6 by the court reporter as Exhibit No. 13 to your
7 deposition. I tell you that, that is a notice of
8 the defendants' intent to inspect premises in the
9 Federal Court case that we are now examining you
10 in.

11 A. Yes, sir.

12 Q. And you've had an opportunity to review
13 the schools listed on the cover page of this
14 notice. And I hope you can tell us which ones
15 you either were involved in or were not involved
16 in. "You're" being LS3P.

17 MR. STAIR: Object to the form.

18 A. I'm confident of West Ashley. I'm
19 confident of Wando.

20 Q. Okay.

21 A. The rest of them I'm not confident of.
22 I can't tell you. They're not -- I'm not
23 familiar.

24 MR. DUKES: And I'll object to the
25 form as outside.

1 MR. RICHTER: Well, it probably
2 isn't. I don't have to -- I'm just trying to
3 cover in a quick way the ground that we're trying
4 to do. If you don't --

5 MR. DUKES: I understand.

6 MR. RICHTER: But if you really do
7 object to it, I think you --

8 MR. STAIR: I think it is outside
9 the scope, but I don't mind you --

10 MR. RICHTER: It's easier.

11 MR. STAIR: I'm happy to say we're
12 in agreement on that, Larry.

13 MR. RICHTER: Rich --

14 MR. DUKES: I just want to be sure
15 that LS3P is not precluded from coming forward
16 with evidence that somebody who does know, 'cause
17 knowledge of other schools was not on the topics
18 you designated.

19 MR. STAIR: Yeah, I mean, I object
20 to the form because he had not reviewed this to
21 say --

22 MR. RICHTER: All right. I
23 understand.

24 MR. STAIR: All right. Good
25 enough.

1 MR. RICHTER: And I don't have
2 to -- I'll refrain from examining him about it
3 right now --

4 MR. DUKES: Okay.

5 MR. RICHTER: -- to the extent that
6 he's not familiar with some of the structures
7 involved on your notice, Rich.

8 Q. I would ask you this: Have you -- when
9 you deal with the public schools, whatever county
10 or state you're in, do you get -- do you deal
11 with some governing body when you do that? Or do
12 you -- do they designate some individual? How
13 does it get accomplished?

14 MR. STAIR: Object to the form.

15 A. How does what get accomplished?

16 Q. The point of y'all getting to a
17 contract, you see a request for qualifications or
18 a request for proposals --

19 A. Correct.

20 Q. -- and y'all are interested. It's a
21 thing that y'all -- y'all bid on these things,
22 and so you want to do that. There will be
23 instructions with that, won't there, that says,
24 "Contact Mr. Stair. He's in charge of accepting
25 these RFQs and RFPs. And that's -- when you've

1 got questions, that's who you call."

2 Is that the way it, generally, happens?

3 A. Generally, there's an RFP or an RFQ sent
4 out; and then you will respond to that RFP based
5 on the information that's requested in that RFP
6 or RFQ.

7 Q. And then --

8 A. You'll submit it. And then the --
9 generally, what happens is the school district
10 has a selection committee. And they read all of
11 them, and then they do what's called a short
12 list. And then once you have a short list, you,
13 generally, get invited to an interview; and then
14 you present your qualifications, which sometimes
15 might include that. (Indicating.)

16 Q. Right.

17 A. And then you have a time to present
18 LS3P. And then you have a question-and-answer
19 period, and they can ask whatever they want.
20 Then you go away, and then they rate everybody
21 and then make a decision -- if they make a
22 decision about who they're going to offer it.
23 One, two, three, four, five, if there's five
24 people.

25 And then if you are the first one, then

1 you are notified; and then you begin the process
2 of negotiating the agreement to design whatever
3 school you were going after.

4 Q. And the project gets defined in a more
5 detailed and sophisticated way so you're not
6 designing cattle stalls. You know that you're
7 designing classrooms and --

8 A. 20-foot boathouse instead of a 10-foot
9 boathouse.

10 Q. Okay. I understand that.

11 At the end of that, you hope that you're
12 the last guy standing. You've got the award, and
13 you build it or you concede that it gets built;
14 and then you sign off on it and go to the next
15 one.

16 A. That's a pretty condensed version of
17 what happens, yes.

18 Q. Just for your information, it's not
19 questioning you. I served on the Aviation
20 Authority here for a number of years; and every
21 time we expanded or did something, you know, we
22 had that same process, in a general, way that
23 you've just outlined.

24 If you'd go back, please, to that
25 exhibit in your hand. What's the number on that?

1 A. No. 12.

2 Q. No. 12 is part of what you've -- in a
3 more sophisticated way than I did -- referred to
4 as marketing materials. And I think you said you
5 recognize it as an LS3P piece. Is that accurate?

6 A. Correct.

7 Q. And LS3P's named on the front of it.

8 Now, it shows in here specifically in
9 what we call the new Bishop England High School
10 is, I guess, to the point of not being the new
11 Bishop England High School anymore.

12 In doing that I'd like you to turn to
13 the one, two, three, fourth page of that exhibit.

14 A. (Complies with request.)

15 Q. And you'll see that there's a
16 handwritten entry at the bottom of that page.
17 Can you read that to us, please?

18 MR. DUKES: Object to the form.

19 A. It appears to say Rick Alexander &
20 Associates, Incorporated, Bishop England High
21 School, 6170-12.

22 Q. Do you know what that entry means?

23 A. I do not.

24 Q. Do you know who Rick Alexander &
25 Associates is?

1 A. I do not.

2 Q. If you turn the page, then, you should
3 see a plan of the building, floor plan; correct?

4 A. Yes, sir.

5 Q. And this is labeled, isn't it, first
6 floor plan?

7 A. It is.

8 Q. I want to ask you, please, to look at it
9 for a moment; and I've got a magnifying glass, if
10 you need it. You may not. I do. And I'd be
11 glad to share it around with those who are in
12 about the same class I was in when we finished
13 high school.

14 If you'll go to the bottom right-hand
15 side, please, and start coming up where it
16 says -- there's a column called "Physical
17 Education Center." Then it lists a lot of
18 component parts of that.

19 Do you see it?

20 A. Yes, sir.

21 Q. I'd like you to come up, please, to
22 where it shows the coach's office; and we'll
23 start with boys coach's office and the athletic
24 director's office.

25 MR. RICHTER: And I realize how

1 small this is; but, y'all, this is how it was
2 produced to us. And we may be able -- I don't
3 know if you know this either, Kent, to have it
4 bigger, you know, easier to read, bigger foldout
5 thing in the disk that you now sent us, Kent.

6 MR. STAIR: But I don't think the
7 disk is going to have anything related to this
8 so --

9 MR. RICHTER: Okay. Okay.

10 Q. Well, does that area show the
11 dressing -- does this rendering show the dressing
12 rooms --

13 MR. DUKES: Larry, I'm going to
14 object to form; and I need to ask the witness to
15 step out of the room, please.

16 MR. RICHTER: Okay.

17 (Witness departs the conference room at
18 2:33 p.m.)

19 MR. DUKES: I asked the witness to
20 step out because this is not the design plan for
21 Bishop England High School.

22 MR. RICHTER: I didn't say it was.

23 MR. DUKES: I know, but you're
24 asking questions as if it is. But I'm looking at
25 the actual plan, which we've produced; and it's

1 different.

2 MR. RICHTER: What number is your
3 production? I'll pull that up.

4 MR. DUKES: I know I produced it.
5 I'm certain I produced it in the first set; but
6 this one doesn't have a Bates number on it, but I
7 can show you.

8 MR. RICHTER: If you'll tell me the
9 Bates number of yours that you produced, I'll be
10 glad to pull it up and bring it in.

11 MR. DUKES: Okay. We'll see.

12 MR. RICHTER: And tell me yours is
13 bigger than this would be nice to hear.

14 MR. DUKES: At least on my iPad it
15 is. I'm certain it was in our first document
16 production.

17 MR. RICHTER: Okay.

18 MR. DUKES: It's downloading for me
19 now but --

20 MR. RICHTER: Let me get Larkin.

21 MS. RICHTER: I mean, is it one of
22 these basically? (Indicating.)

23 MR. RICHTER: No. Their production
24 will be Bates stamped.

25 MR. DUKES: This is in our initial

1 production. You can see --

2 MS. RICHTER: What's in the corner?
3 GI partial first floor plan. Yeah.

4 MR. DUKES: The one that's in that
5 diagram, if you look, it has -- up here it has
6 this office, which is not in this diagram.

7 MR. RICHTER: This is off the
8 record.

9 (Off-the-record discussion.)

10 (Witness is returned to the conference
11 room at 2:42 p.m.)

12 A. May I go back and clarify a response?

13 Q. Sure.

14 A. You asked me if I knew who this was, and
15 I said I don't. But is it -- it may be possible
16 that this is the photographer's name.

17 Q. Oh, for the photo --

18 A. The photographs that follow.

19 Q. That are in the book, yeah.

20 A. Are you going to ask any more questions
21 about this one? (Indicating.)

22 Q. I don't think so. What did you call it?
23 Marketing material?

24 MR. RICHTER: Rich, if you can look
25 at the -- where's the Bates stamp number, please?

1 MR. DUKES: The Wi-Fi says slow. I
2 could not download it; but it's 472, I believe.

3 MS. RICHTER: Oh, here we go.

4 MR. RICHTER: Do you see that one?

5 MS. RICHTER: Yeah. It's down
6 here. 472. This is the -- I guess, the right
7 one.

8 MR. RICHTER: 472 seems to show
9 the -- among other things, I guess, but it shows
10 the gym area.

11 MS. RICHTER: He's never seen this,
12 I don't think, has he? Have you seen this?

13 MR. STAIR: Yeah. Might need to
14 just take him out and look at it real quick just
15 to familiarize him with it.

16 (Recess taken 2:46 p.m. is to 2:49 p.m.)

17 BY MR. RICHTER:

18 Q. Just so you know what to focus in on,
19 I'm going to ask you to show us where the
20 washrooms are, where the offices are with the
21 viewing windows, and two are going to be on one
22 end, as you know, for the male; and then the
23 females are on the other side or is on the other
24 side of the basketball court down the other end
25 of the long hallway.

1 MR. STAIR: Does anyone know if
2 this is the final sealed --

3 MR. DUKES: I've never seen a
4 sealed one.

5 MR. STAIR: Okay. I don't see the
6 seal on this, but okay.

7 Q. You got yourself oriented?

8 A. Yes.

9 Q. I'm going to come around and look over
10 your shoulder, if you don't mind. Let's go on
11 now and we're -- we have shown you on a computer
12 screen before you a document produced by Bishop
13 England or the Diocese defendants which bears the
14 Bates Stamp No. 00472 in a series of documents
15 ending with --

16 MR. RICHTER: What is the number?
17 491?

18 MS. RICHTER: 472 through 493.

19 Q. Through 493. Presently you're looking
20 at 472.

21 THE WITNESS: I don't see a Bates
22 stamp.

23 MS. RICHTER: Yeah. It's tiny on
24 there.

25 THE WITNESS: I'm looking at a

1 floor plan.

2 MS. RICHTER: Let me show you. See
3 right here. 472. (Indicating.) And then you
4 can just use this bar to --

5 THE WITNESS: I got that. I just
6 have to find the --

7 Q. Dressing rooms?

8 A. No. I want to see the Bates stamp.
9 000472. Okay. So, yes, is the answer to your
10 question. It appears to be Bates stamped
11 document 472.

12 Q. Now if you'll pull back, please, and
13 show us, please, the dressing rooms, two male and
14 then in a moment the one female dressing room.

15 A. (Complies with request.) Boys varsity
16 locker room. Right there. Right there. Coach's
17 office right there. (Indicating.)

18 Q. Okay.

19 A. AD office right there. Boys PE locker
20 room. Right there. (Indicating.)

21 Q. Okay.

22 A. Girls coach's office right there.
23 (Indicating.)

24 Q. Clearly labeled. You can see.

25 A. And it doesn't have a name; but it's

1 girls PE locker room, I think, is what it is.

2 It's right there. (Indicating.)

3 Q. There's only one.

4 A. There's girls PE. There is a girls

5 varsity locker right, which is right there.

6 (Indicating.) But there's an electric room

7 there. There's no office overlooking that girls

8 varsity room. There's two toilets, men and

9 women's toilets.

10 Q. Outside of that?

11 A. Yeah. You enter from the hallway here.

12 (Indicating.)

13 Q. So it's not in the -- what you refer to

14 the girls --

15 A. Varsity locker room, correct.

16 Q. As to the girls varsity locker, can you

17 show me where the entrance is to that, please?

18 A. Right there. (Indicating.)

19 Q. I see it. Yeah.

20 And where is the coach's --

21 A. And there's another one right there.

22 (Indicating.)

23 Q. Where is the coach's office or athletic

24 department or other school personnel official

25 office that looks into the girls -- what you

1 refer to as the girls varsity locker?

2 A. There's not one.

3 Q. And do you know that this is as built?

4 A. I do not.

5 Q. So if there are only -- okay. You do
6 not know whether it's as built. I understand.

7 Now, let's go to the boys, please, the
8 boys side, if you would.

9 A. (Complies with request.)

10 Q. Thank you.

11 Now, I'd like you to show me, please, in
12 the athletic director's office -- is that as
13 built? Do you know?

14 A. I do not.

15 Q. And we're -- is there a corridor on this
16 end and a corridor on this end? (Indicating.)

17 A. There is a vestibule on what I'm going
18 to call plan south end.

19 Q. Okay.

20 A. Okay? There is a -- I'm going to call
21 this an entry vestibule to the locker room. This
22 is a -- a way you make yourself -- here's the
23 corridor right here. (Indicating.) Hall. It
24 says hall. That's what I would deem the
25 corridor. This is the beginning of the entry to

1 the locker room.

2 This is a door to the locker room.

3 (Indicating.) You go in. You go. You walk
4 past. There's the window right there that we've
5 been referring to. Here are the lockers, and you
6 can exit out the bottom plan south of that locker
7 room. (Indicating.)

8 So this is the varsity. Here is, you
9 know, an entry from the gymnasium into what I'm
10 going to call the vestibule entry into the locker
11 room, the PE locker. You enter the door here.
12 You walk past the window right there. There's
13 the AD's office. (Indicating.)

14 I mean, that's just the name. It could
15 be a PE instructor. There's the lockers, and you
16 can keep going south; and you can exit out the
17 plan south of that boys PE locker right there,
18 out of that door. (Indicating.)

19 Q. And do you think this is an as-built
20 rendition?

21 A. I can't -- I can't answer that,
22 Mr. Richter. I do not know.

23 Q. And can you show me, please, where the
24 door is to get into the coach's office from the
25 hallway?

1 A. Right here. (Indicating.)

2 Q. And same thing for the AD's office.

3 A. Right there is the door into the AD's
4 office right there. (Indicating.)

5 Q. And each of those have a private
6 bathroom, both of those offices; correct?

7 A. They do.

8 Q. Is that a shower in each one?

9 A. That's a shower and a closet and a
10 toilet and a sink.

11 Q. And a view window?

12 A. There's no viewing window on the toilet.
13 The viewing window is right there in the office
14 of the coach's office. It is right there in the
15 AD's office; and if we go over to the women's
16 side, it is right there in the girls coach's
17 office. It's right there. (Indicating.)

18 Q. And where are the naked children?

19 MR. DUKES: Object to the form.

20 A. The partially-clothed children are in
21 this area. (Indicating.)

22 Q. How do you know they're partially
23 clothed?

24 A. Same way you know they're naked.

25 Q. You can't answer that. It got you in

1 trouble before. Do you understand that?

2 MR. STAIR: Object to the form.

3 MR. DUKES: Object to the form.

4 A. The children are in this area right
5 here. I don't know if they're -- to what degree
6 they are clothed.

7 Q. So can we disregard your comment about
8 the partially clothed?

9 A. You can, yes, sir. Yes, sir.

10 Q. Thank you.

11 Now you testified earlier there's no
12 door -- I mean, no window in this door, didn't
13 you?

14 A. I testified I did not know if there was
15 a window in that door. I believe that's what I
16 testified. I'm not sure without looking at the
17 plans and the -- in this case there's no door
18 number. So I can't tell you which door that is,
19 and you take it from a door number to a door
20 schedule; and that would show you more
21 information about what's in that door or not in
22 that door.

23 Q. Can you walk from this point -- the door
24 at the coach's office -- all the way down this
25 passageway, across the basketball -- well, out-

1 of-bounds portion of the basketball court over to
2 the girls side on that long hallway passageway,
3 whatever you call it? (Indicating.)

4 MR. DUKES: Object to the form.

5 A. If there -- see my cursor?
6 (Indicating.)

7 Q. I do.

8 A. Right here. (Indicating.) You can
9 walk. I don't know how this door is controlled;
10 but if you walk through that door, you can walk
11 through -- down this entry vestibule into the
12 gymnasium, across the gymnasium through this --
13 I'm assuming it's a cased opening into this entry
14 vestibule past the girls coach's office entry
15 door, through another door, and get into the
16 girls locker. (Indicating.)

17 Q. And do you think this is as built?

18 A. I do not know. I can't --

19 Q. For any of it, you don't know whether --

20 A. I can't answer that.

21 Q. I got you. If you don't mind, go back
22 to the boys side, please.

23 A. (Complies with request.)

24 Q. Thank you.

25 Now, I want to go look at your testimony

1 earlier about the doors -- in the window in the
2 doors.

3 MR. RICHTER: If you'll mark that
4 as the next in order, please.

5 (Exhibit No. 14 was marked for
6 identification.)

7 Q. Let me give you that, please.

8 MR. STAIR: I'm going to step out a
9 moment to talk about this. Do you have any more
10 you want so we kill it with one stone?

11 (Exhibit No. 15 and Exhibit No. 16 were
12 marked for identification.)

13 (Recess taken 3:03 p.m. to 3:05 p.m.)

14 MR. RICHTER: You had -- we'll go
15 back on the record.

16 BY MR. RICHTER:

17 Q. Now, I'd like you to show me, please, if
18 you can, where this door is located on that
19 drawing, which is on your computer screen.
20 (Indicating.)

21 MR. STAIR: "This door" being
22 Exhibit No. 14?

23 MR. RICHTER: Yes.

24 MR. STAIR: Okay.

25 A. I believe it's right here.

1 (Indicating.) What is identified -- could be AD
2 office.

3 Q. And of these, is that the viewing
4 window? (Indicating.)

5 A. There's the window right there, yes.
6 (Indicating.)

7 Q. And these lockers coming down this way?
8 (Indicating.)

9 A. Yes, sir.

10 Q. Now, as to what you've identified as the
11 AD's office, that is -- is that Room 144?

12 A. I can't answer that. I -- I don't -- I
13 don't see a number on the plan. It could be. It
14 could be.

15 Q. And can you tell me, please, whether
16 there's a window in the door to the AD's office
17 adjoining it to the hallway?

18 MR. STAIR: Object to the form.

19 A. Let's say this. Exhibit No. 14 shows a
20 door with a window in it. I believe. But I
21 can't confirm for sure -- because I don't have
22 numbers on the plans -- that this is that door.
23 (Indicating.)

24 If this picture is of that door, there
25 is a window in that door but I -- I can't say

1 with 100 degree -- 100 percent degree of
2 certainty because there are no numbers on the
3 plans that would identify that office as office
4 C144.

5 Q. So someone in this hallway -- assuming
6 that C144 is this office and that the door in
7 Exhibit No. 14 is the -- is a depiction of the
8 door to the AD's office, Room 144, and it has a
9 window in it, as you can see, can somebody stand
10 in the hallway, look through the AD's office
11 through the viewing window into the locker room
12 and see naked students?

13 MR. STAIR: Object to the form.

14 MR. DUKES: Object to the form.

15 A. The potential exists, yes, sir.

16 Q. Why would you design such a piece of
17 work?

18 MR. STAIR: Object to the form.

19 A. Security.

20 Q. So you intended someone to stand in the
21 hall and look through the coach's office through
22 the viewing window into the dressing room where
23 the students are, see them naked, half naked,
24 fully clothed, whatever they were, are located.
25 Is that what you're saying?

1 MR. STAIR: Object to the form.

2 A. No.

3 Q. What are you saying?

4 A. Security.

5 Q. Explain that. I don't understand.

6 A. The window is in the office for security
7 reasons. The window is in the door on the -- now
8 I'm making a supposition -- to see if anybody was
9 in the office. Somebody could look in and see if
10 there was a coach in the office. There's a --
11 there's a blind on that window is what it appears
12 to me.

13 Q. Blind on all the windows.

14 A. Well, it looks -- and I can't tell for
15 sure -- but it looks like it could be wire glass
16 too. I can't tell for sure.

17 Q. Assume there is a blind on the window.

18 A. Okay.

19 Q. Blinds open and blinds close, don't
20 they?

21 A. They do.

22 Q. That's the way you designed the viewing
23 window looking at the students in the dressing
24 room.

25 A. Correct.

1 Q. So what are you saying? I don't
2 understand what you're saying.

3 MR. STAIR: Object to the form.

4 A. You asked me if the -- if it was our
5 intent to design to have the ability to look
6 through the door into the locker room, and the
7 answer to that is no.

8 Q. I didn't ask you that.

9 A. That's what I heard you say.

10 Q. Well, you misheard. I'll read it back
11 to you though.

12 A. Thank you, sir.

13 Q. Can you just give me the last question?
14 You might can shortcut this.

15 Do you agree with me somebody can stand
16 in the hallway, look through the window in the
17 coach's door, which is the office door, whoever's
18 office door it is, all the way through to the
19 viewing window; and on the other side of the
20 viewing window would be students, some clothed,
21 some unclothed, some fully unclothed, some fully
22 unclothed, some in street clothes, whatever state
23 of attire they were in, and -- and view those
24 people --

25 MR. STAIR: Object to the form.

1 Q. -- from the hallway? Couldn't that
2 happen?

3 MR. STAIR: Object to the form.

4 MR. DUKES: Object to form.

5 A. If the moon and the stars align just
6 right with the blinds in the position, it is
7 possible to do that, yes, sir.

8 Q. So that's what I'm asking you. Why
9 would you design a building that allows that to
10 happen to children?

11 MR. STAIR: Object to the form.

12 A. The design was not intended to do that.

13 Q. But it does it, doesn't it?

14 A. It allows it if the moon and stars
15 are -- are aligned, all conditions being perfect,
16 that could happen. The design was not intended
17 to do that.

18 Q. And who is it that did not intend to
19 design to do that?

20 A. LS3P.

21 Q. How do you know that?

22 A. Because I represent LS3P. Your question
23 was why did you design -- let me see. The
24 question I heard was why did you design something
25 that would allow that to happen? And my response

1 is: The intent was not to design it to allow
2 that to happen. That was not the intent of the
3 design.

4 Q. But you said it can happen.

5 A. It could if -- again, if the blinds are
6 in the right position, everything was just lined
7 up perfect, it could happen, yes, sir.

8 Q. And you didn't warn the students of that
9 in any way at all, did you?

10 MR. DUKES: Object to the form.

11 MR. STAIR: Object to the form.

12 A. No, sir.

13 Q. And you say that LS3P intended not for
14 that to occur. Isn't that what you said?

15 MR. STAIR: Object to the form.

16 A. I said the design was not intended for
17 that to occur.

18 Q. That's what I want to know.

19 A. Yes, sir.

20 Q. Who told you that?

21 A. That's the statement Roger Attanasio's
22 making as the 30(b)(6) witness of LS3P. Nobody
23 told me that.

24 Q. And how do you know it?

25 A. I'm just making an assumption as an

1 architect working for LS3P.

2 Q. That somebody wouldn't do something that
3 crazy. Is that what you're assuming?

4 MR. STAIR: Object to the form.

5 MR. DUKES: Object to the form.

6 A. No, sir. That's not what I'm saying.

7 Q. Now, are you of any -- are you aware of
8 any project manuals or guidelines, ASTM
9 standards, planning or construction guides which
10 specify whether or not it is appropriate to have
11 windows in gymnasium dressing/locker rooms?

12 MR. STAIR: Object to the form.

13 MR. DUKES: Same objection.

14 A. I would have to research some of the --
15 the guidelines that we use, but I can't quote you
16 chapter and verse of a specific guideline that
17 says you must put this in here or you must not
18 put that in there.

19 Q. Have you ever seen it?

20 A. I've probably read a guideline or two
21 across my time, but I don't -- as I sit here
22 today, I can't quote you which guidebook, which
23 design manual would speak to that.

24 Q. I'm only asking, you understand, a
25 narrow question exactly as I framed it. Project

1 manuals, guidelines, ASTM standards, planning or
2 construction guides which specify whether or not
3 it is appropriate to have windows in gymnasium
4 dressing/locker rooms.

5 That's the question to you. Are you
6 aware of any of those?

7 MR. STAIR: Object to the form.

8 MR. DUKES: Same objection.

9 A. I'm aware of -- of design guidelines,
10 Mr. Richter. But, again, I can't speak with a
11 degree of certainty -- 100 percent certainty of
12 what they say about windows in locker rooms.

13 Q. If they say no, don't put windows in
14 locker rooms, you -- "you" being LS3P -- wouldn't
15 have put windows in the locker rooms. Is that
16 accurate or not?

17 MR. STAIR: Object to the form.

18 MR. DUKES: Object to the form.

19 A. I would like to think that would -- is a
20 correct statement, yes, sir.

21 Q. How about if the owner, person employing
22 you, writing your check says, "I want them. I
23 want viewing windows into these children's locker
24 rooms"?

25 A. And the guidelines said not to?

1 Q. And the guidelines that say don't do it.

2 A. I think that would be a point of
3 discussion with the owner for clarification.

4 Q. Well, would your -- LS3P's position be?

5 A. They would have a point of clarification
6 saying, "The guidelines says don't put it in.
7 You're asking me to put it in. You're asking me
8 to do something other than what the guideline
9 says." We would have to document that so that we
10 would know that we were directed to do something
11 that was not recommended.

12 Q. And you would do it, would you not?

13 A. If requested --

14 MR. STAIR: Object to the form.

15 A. If asked by the owner and that's what
16 they wanted, yes, sir.

17 Q. Did the children want that?

18 MR. STAIR: Object to the form.

19 MR. DUKES: Object to form.

20 A. I cannot answer that.

21 Q. But you would do whatever somebody who
22 was giving you money told you to do, wouldn't
23 you?

24 MR. STAIR: Object to the form.

25 MR. DUKES: Object to the form.

1 A. Not always, no, sir.

2 Q. In that instance.

3 A. There's a limit -- there's a limit to
4 what we would do. If you asked me to violate a
5 code because you want it that way because it was
6 easier to use but it was against the building
7 code, I would not do that.

8 Q. Building code as opposed to all of these
9 categories that I asked you about?

10 A. Design guidelines, yes, sir.

11 MR. STAIR: Object to the form.

12 A. Building code different than a design
13 guideline.

14 Q. So you would violate a design guideline,
15 but you wouldn't violate a building code? Is
16 that your testimony?

17 MR. DUKES: Object to the form.

18 MR. STAIR: Object to the form.

19 A. I don't know that I would use the word
20 "violated" a design guideline. A "design
21 guideline" is something that you design to and
22 try to accomplish a program that was requested by
23 the owner. And if a design guideline said,
24 "Don't put a window in" and somebody said "you
25 want a window in," you'd have to discuss it with

1 him, as I said, as to why you do it, why you
2 don't do it. Then you would have to make a
3 decision.

4 Q. What if it is -- enables the violation
5 of a law? Would you make a deal with an owner to
6 put in something that enabled them, in this
7 instance, to view naked children?

8 MR. STAIR: Object to the form.

9 MR. DUKES: Object to the form.

10 A. I don't think we would do something
11 knowingly to violate a law, no, sir.

12 Q. Well, you do know, don't you, that it's
13 against the law to view naked children in this
14 example?

15 MR. STAIR: Object to the form.

16 MR. DUKES: Object to the form.

17 A. Yes, sir.

18 Q. Well, would you do that or not?

19 MR. STAIR: Object to the form.

20 MR. DUKES: Object to the form.

21 A. I'm, again, going to say, I would not
22 knowingly violate the law. Design something that
23 violates a law.

24 Q. I thought you said you knew it was
25 against the law to look at naked children.

1 MR. STAIR: Object to the form.

2 MR. DUKES: Object to the form.

3 A. I mean, I -- that, to me, is kind of
4 common sense. I mean, I, you know. I can't tell
5 you, "Please quote to me what chapter and verse
6 of the law requires you not to look" -- I don't
7 know. I can't do that. So I don't know.

8 Q. And -- but that's the dividing line for
9 you.

10 A. It's one of them. I mean --

11 MR. STAIR: Object to the form.

12 A. -- it's not all of it but -- all of them
13 but --

14 Q. Well, I guess what I'm -- one of the
15 things I'm asking is: Do you understand that
16 you, you individually or LS3P or individuals at
17 LS3P, would have gotten with somebody else --
18 that is, the owner, the person who's writing a
19 check to you -- to draw this thing that they want
20 and that the two of you together would have
21 agreed to produce such a design?

22 MR. STAIR: Object to the form.

23 MR. DUKES: Object to form.

24 A. I'm not -- I didn't hear the question.
25 What's the question?

1 MR. STAIR: Subject to my objection
2 so you can go on with it.

3 Q. Here's what I'm asking you.

4 Do you understand that you
5 individually -- or LS3P or individuals at LS3P if
6 it's not you being that individual that's making
7 this agreement -- would then have agreed -- you
8 and this other person from the Diocese who
9 insisted on the viewing windows -- would then
10 have to --

11 MR. DUKES: Object to the form.

12 MR. RICHTER: I can't let you
13 interrupt the questions, Mr. Dukes. I'm going to
14 have to ask you not to do that anymore.

15 MR. STAIR: It's sometimes hard to
16 say when you're through. So let him finish his
17 question --

18 MR. RICHTER: He didn't interrupt.
19 He didn't interrupt.

20 MR. STAIR: I know that. But what
21 I'm saying is the problem is: Sometimes we don't
22 know you're through with your question. Wait so
23 you give us time to object. Then you can answer
24 subject to the objection. Go on.

25 Q. I want to ask you, again, do you

1 understand that you, you individually or LS3P or
2 individuals at LS3P, assuming you had this
3 discussion with the builder or with an owner who
4 insisted upon these kinds of viewing windows of
5 children who would some of the time be completely
6 naked, that you would have gotten with somebody
7 else, whoever that person, that representative
8 from the other side of the contract was, but the
9 owner or designee of the owner, person who is
10 writing you a check is who I'm referring to --
11 y'all would have gotten together and you would
12 have agreed to draw what they want. They would
13 describe it to you, and you agreed to draw it;
14 and that the two of you together, then, would
15 have agreed to produce such a design.

16 MR. STAIR: Object to the form.

17 MR. DUKES: Same objection.

18 A. In a manner, a program is developed; and
19 a program describes what the owner desires for
20 this -- in this case high school. The architect,
21 then, comes up with a design that responds to the
22 program requirements developed between the owner
23 and the architect.

24 The architect draws -- and in this case
25 a two-dimensional means -- their understanding of

1 the program and the responses to that program.
2 The owner would, then, review that design, these
3 plans, and approve it; and in those plans would
4 be that window, that door with that window.

5 So in a sense, there is a development of
6 an understanding of what you want, the desires.
7 There is the development of the design. There is
8 the creation of the documents. There is a review
9 of the documents; and there is approval by both
10 entities that, yes, what you have designed and
11 drawn responds to what we had asked for in the
12 program.

13 Q. Do people from time to time change their
14 minds and say, for example, rather than having
15 six-over-six lights in these windows on the front
16 of my house, I want eight over eight? That
17 happens, doesn't it?

18 A. Yes.

19 Q. Routine, isn't it?

20 A. Changes in design happen, yes, sir.

21 Q. Routinely?

22 A. Routinely.

23 MR. DUKES: Object to the form.

24 Q. And you didn't sit down one day and draw
25 the plans and give them to Bishop England and

1 then say, "These are the plans for your school"
2 without going to them and saying, "Well, this
3 needs to be moved over here" or "that office
4 needs two doors and this one needs only one" or
5 that kind of exchange is what I'm referring to.

6 A. I'm sure that kind of exchange -- review
7 of the plans and discussing adjacencies and
8 materials -- a lot of things happen during the
9 course of the design and production of the
10 drawings.

11 Q. I understand.

12 A. Many of it happens through construction.

13 Q. Sure. I understand that.

14 And you agree that that would have
15 involved two parts. Two representatives. LS3P
16 here or -- or you if you were the individual here
17 and the school, Diocese, or the person designated
18 by them here; and you'd have to gotten the
19 message. "We want a viewing window where we can
20 see these children," whatever their state of
21 dress is. It's a dressing room, for goodness
22 sakes. And that would involve two people doing
23 that.

24 Do you agree with that, don't you?

25 MR. STAIR: Object to the form.

1 MR. DUKES: Object to the form.

2 A. At least two people, Mr. Richter.

3 There's probably more.

4 Q. Maybe four from each side. I don't know
5 how y'all staff those meetings up. But two sides
6 is what I'm trying to say.

7 A. Yes, sir. Owner-architect.

8 Q. At least an individual on this side and
9 at least an individual -- maybe four on this side
10 and four on the other side as well. Okay.

11 Do we follow each other?

12 A. Yes, sir.

13 Q. Thank you.

14 And so if what you did, then -- well, I
15 don't need to ask you that.

16 I want to be sure that we're straight
17 and clear on these doors entering the hallway and
18 having windows that you can see through in them.

19 If you look at -- I think you just did
20 No. 14. If you don't mind, let's do No. 15.
21 Exhibit No. 15 which says "men's basketball
22 office." Do you see that?

23 A. Yes, sir.

24 Q. And in looking at that copy of
25 photographs that Mr. Dukes and I and some other

1 people one day went over there and took, do you
2 agree that you can see through that door to the
3 men's basketball office and -- well, can you
4 agree with that much first?

5 A. I can see through the window at the
6 men's basketball office door, yes, sir.

7 Q. And that door opens onto the corridor,
8 or does it open back into the coach's -- by the
9 men's basketball office?

10 A. It opens into the office.

11 Q. And you can tell that by the way it's
12 framed around it, can't you?

13 A. I can tell by the -- the handle on the
14 door, yes, sir. The lever handle --

15 Q. Right.

16 A. -- and where the door is in the frame.
17 It's on the inside of the frame and not on the
18 outside of the frame.

19 Q. Right. That's what I was trying to -- I
20 don't know how to say that exactly. You do. But
21 when I said, "but you can tell that by the
22 framing," that's what I'm trying to say in a more
23 architectural way.

24 All right. And then in this basketball
25 office, you agree, don't you, that there is a

1 4-foot by 4-foot plate glass window looking into
2 the locker room/dressing room facility?

3 MR. STAIR: Object to the form.

4 A. I see a window on the plan that you --
5 we've looked at. I don't see a size of the
6 window. So I can't confirm that it's 4-foot by
7 4-foot.

8 Q. Well, how big does it show on the plan?

9 A. It doesn't show a dimension.

10 Q. Well, the good news is, we can certainly
11 ascertain that. Here's how.

12 The defendants bricked the windows up
13 and threw the windows away. So somebody will
14 have billed them or somebody would have taken a
15 part with them in doing something with evidence
16 in the case. So we're going to -- we'll know all
17 of that at the end of the day.

18 MR. DUKES: Object to the form.

19 Q. I don't know how many people we have
20 sitting at the tables by that time; but we'll
21 know it, at least.

22 MR. STAIR: If that was a question,
23 I object to the form.

24 Q. Do you understand that?

25 MR. STAIR: Object to the form.

1 Q. That's the question.

2 MR. STAIR: Object to the form.

3 MR. DUKES: Object to the form.

4 A. Well, first off, do I understand what
5 you just stated? I understand what you just
6 stated, but there was no question in there for
7 me.

8 Q. The question is: Do you understand
9 that?

10 MR. STAIR: Object to the form.

11 MR. DUKES: Object to the form.

12 A. Yes, sir.

13 Q. Thank you.

14 Now -- so what is your answer to the
15 direct question: Can somebody going -- walking
16 down the hall look through the door -- the window
17 and the door in the coach's office from the
18 hallway through the window which we've been
19 referring to as the "viewing window," in the
20 back -- in this case a basketball office, I think
21 it was called -- and see through it to the
22 dressing room?

23 MR. STAIR: Object to the form.

24 MR. DUKES: Object to the form.

25 Q. And I'm not asking you about sun, moon,

1 and stars and all of that. I'm asking you about
2 a window on one side of which is a staff person
3 from Bishop England and/or other people and on
4 the other side are children who are either
5 totally nude, fully clothed, or partially
6 clothed.

7 MR. STAIR: Object to the form.

8 MR. DUKES: Object to the form.

9 Q. That's what I'm asking you.

10 MR. STAIR: Object to the form.

11 MR. DUKES: Same objection.

12 A. And I think I answered it previously by
13 saying it is possible.

14 Q. Sure.

15 And it's possible because you designed
16 it that way; isn't that correct?

17 MR. STAIR: Object to the form.

18 MR. DUKES: Same objection.

19 A. It is possible, yes, sir.

20 Q. That's not the question. Do you want me
21 to have the question read back to you?

22 A. No. You said it was possible because
23 you designed it that way.

24 Q. That's right.

25 A. And my answer is, yes, it is possible.

1 Q. No. That's not the question. You're
2 asking -- you're answering is it possible and I
3 asked you specifically -- and we'll -- if you --
4 you're entitled to go as carefully and slowly as
5 you want to, and I'm -- and I can't -- can't and
6 won't stop you from doing that.

7 But the question was: It is possible,
8 isn't it, because you designed it that way?

9 A. Yes.

10 MR. STAIR: Object to the form.

11 Q. Thank you.

12 Can you tell whether the sizes of the
13 windows in the three -- what we call the three
14 viewing windows -- girls locker room, boys locker
15 room, boys locker room -- whether those are the
16 same size on your plans?

17 A. They appear to be, yes, sir.

18 Q. And do you know anything about who
19 manufactured or provided those?

20 A. I do not.

21 Q. Would that be a thing that we'd need to
22 learn really from the contractor instead of
23 from -- you wouldn't have bought them, would you?

24 A. No, sir.

25 Q. Contractor would have, wouldn't he?

1 A. Correct.

2 Q. So I hear you're saying -- and if I'm
3 wrong, please tell me. But I hear you saying you
4 need to look to the contractor to answer that
5 information for you?

6 A. Who bought the windows?

7 Q. Yeah.

8 A. Yes, sir.

9 Q. Thank you. I understand it.

10 Now, what about what you're looking at
11 on the screen? Do you need that before you
12 anymore?

13 A. Depends on the question you ask me.

14 Q. That's fair.

15 Question I'm going to ask you next is:
16 Do you agree that, assuming each of these doors
17 are just like the one that you looked at, the two
18 that you looked at here in No. 14, No. 15, and
19 No. 16, do you agree that those are all
20 accessible through this corridor that has the
21 word "Bishops" written on it there?

22 MR. STAIR: Object to the form.

23 MR. DUKES: Object to form.

24 A. I'm not sure I'm following what you're
25 trying to ask me. Let's -- let's say it this

1 way. This area is the gymnasium, right. All of
2 this is the gymnasium. (Indicating.)

3 You have to cross through a -- you
4 didn't shoot it from that direction. You have to
5 cross through what I think is a cased opening
6 here to get from this room -- I'll call an entry
7 vestibule -- into the locker room. You call it a
8 hallway.

9 Q. When you say a cased --

10 A. See that opening right there?

11 (Indicating.)

12 Q. Yeah. I just wanted you to define that.

13 A. There's no door shown in that opening.
14 So I call that a cased opening, okay, as opposed
15 to a doorway where there's a door swinging.

16 Q. I understand.

17 A. So if you get into this entry vestibule
18 and you pass by heading into the locker room, you
19 can see into that office through that window in
20 the door. There's the window, and you can see
21 into the locker room. It's possible.

22 Q. When you say if you get into that
23 hallway, there's no door there to keep you out of
24 that.

25 A. From the locker room -- from the

1 gymnasium. There is right there. (Indicating.)
2 There's no door to keep you out of there; but if
3 you're coming from this hallway, you can't get to
4 this hallway without going through a door.

5 Q. Okay.

6 A. Similarly, you can't get into -- on the
7 girls side, you can come from the locker room --
8 from the gymnasium through that cased opening
9 into that entry vestibule, but you can't come
10 from the hallway into this entry locker room --
11 entry vestibule and into this one without going
12 through that door. You have to cross through a
13 door to get from here to here. (Indicating.)
14 You don't have to cross through a door to get
15 from here to here, but there's no office there.

16 On this side -- on the boys side, you
17 can come from this hallway into this secondary
18 entry, pass by this coach's office, and see
19 directly through there; but you have to enter a
20 door to get into this hallway. (Indicating.)
21 You can't go from here to there without going
22 through a doorway.

23 Q. A doorway?

24 A. A door. Right there. (Indicating.)

25 Q. Well, it may be open. It may be closed.

1 If it was open, it would be a doorway, wouldn't
2 it?

3 MR. DUKES: Object to the form.

4 A. It would be an open doorway, yeah.

5 Here --

6 Q. From way down in this hallway, you came
7 out of the restroom. Let's say you can come
8 down, walk down this hallway and look straight in
9 this coach's office, straight through this door,
10 the viewing window, and see whoever's in there
11 doing whatever it is they're doing at the -- at
12 that moment? (Indicating.)

13 A. It is possible, yes, sir. It is
14 possible to do that.

15 MR. DUKES: Object to the form.

16 Q. Now, you don't like to use the word
17 "hallway" here. (Indicating.)

18 A. That's not a hallway. That's part of
19 the gymnasium. That is not a hallway. That --
20 that word is -- the word "Bishops" is graphics on
21 the floor, which is painted.

22 Q. Okay.

23 A. So the gym -- let me shrink it down a
24 bit. To enter the gym, you come into these
25 doors; and this whole space here -- well,

1 actually all the way over here because that's
2 bleachers. That is the gymnasium. (Indicating.)

3 That's separate from the -- the locker
4 rooms. So I -- the reason I don't call this a
5 hallway is 'cause it's not a hallway. It's part
6 of the gymnasium. The hallway is above the
7 gymnasium.

8 There's the hallway. (Indicating.) You
9 enter into the vestibule, enter into the gym. On
10 the bottom side you're outside. You go to the
11 outside. So that's part of the gymnasium.
12 That's not a hallway.

13 Does that make sense? Am I -- am I
14 answering your question?

15 Q. I just want you to tell me where the
16 hallway begins and where whatever you call this
17 ends. (Indicating.)

18 A. Well, I call this the hall. That --
19 that right there is the corridor, the hallway.
20 (Indicating.) This space on this side is the
21 hallway.

22 This, to me, is the entrance -- the
23 beginning of the entrance to the locker room
24 'cause you got to go in here and into that door;
25 and then you go all the way and go out the bottom

1 side if you were to go down, go out that door.

2 (Indicating.)

3 Vestibule, you enter in the locker room,
4 you go through it. You come out. Again, I'm --
5 I'm titling this, kind of, the entry vestibule,
6 locker room. There's the hallway. (Indicating.)

7 On the other side of the hallway, this
8 goes to the outside. This is the hallway.

9 (Indicating.) Entry vestibule to the boys
10 varsity locker, into the locker, through that
11 door, you can enter into the PE locker.

12 (Indicating.)

13 So I don't know if that answers your
14 question.

15 Q. I hear everything that you're saying.

16 Here's where I wanted to ask you. These
17 are bleachers, aren't they? (Indicating.)

18 A. Yes, sir.

19 Q. Let's assume you're sitting on Row 2 of
20 the bleachers down here where you have just
21 finished eating a sandwich.

22 A. Okay.

23 Q. You've taken a break. You're eating a
24 sandwich. While you're eating the sandwich,
25 you're thinking, "I'd like to go look at some

1 naked children."

2 What prevents you from getting up,
3 climbing down Row 1, walking straight down the
4 opening. Nothing blocking your access
5 whatsoever. And going and looking in this
6 athletic director's office straight down the line
7 of lockers and viewing your naked boys?

8 MR. STAIR: Object to the form.

9 MR. DUKES: Object to the form.

10 A. Nothing.

11 Q. Pardon me?

12 A. Nothing.

13 MR. STAIR: Object to the form.

14 Q. Thank you.

15 And the same thing. We can do it on the
16 other side, if you want to move this.

17 MR. DUKES: Object to the form.

18 Q. Unless you just agree with that.

19 MR. STAIR: Object to the form.

20 Q. Same thing would happen on the -- could
21 happen on the girls' side; correct?

22 MR. STAIR: Object to the form.

23 MR. DUKES: Object to the form.

24 A. Yes.

25 Q. So without ever going in the girls

1 coach's office, could you not stand at the girls
2 coach's office door, look through the window, and
3 look into the locker room at the two ladies who
4 are changing clothes right in front of those two
5 lockers which are two removed from the window?

6 MR. STAIR: Object to the form.

7 MR. DUKES: Object to the form.

8 A. It is possible.

9 Q. And it's possible, isn't it, because
10 LS3P made it possible?

11 MR. STAIR: Object to the form.

12 MR. DUKES: Same objection.

13 A. The design made it possible, yes, sir.

14 Q. Thank you.

15 MR. STAIR: I can't quite tell
16 where you are; but if you've got much more to go,
17 a comfort break would sure be good.

18 MR. RICHTER: Yeah, if you need
19 one.

20 (Recess taken 3:40 p.m. to 3:45 p.m.)

21 BY MR. RICHTER:

22 Q. I'd like to call your attention to
23 Exhibit No. 16.

24 A. (Complies with request.)

25 Q. Which is marked by the court reporter

1 and is in your hand and ask you, please, if that
2 is another view of what I refer to as a hallway?
3 And you said --

4 MR. DUKES: Can I have a copy of
5 it, please?

6 MS. RICHTER: You don't have a
7 copy? I thought I gave it to you. I'm sorry.
8 I'll make you a copy real quick.

9 MR. DUKES: Thank you.

10 (Pause in proceedings.)

11 BY MR. RICHTER:

12 Q. What I want to ask you is about No. 16.
13 Does that show a doorway to the woman's school
14 official's office?

15 A. It appears to, yes, sir.

16 Q. And that window to her office is in the
17 door to her office, isn't it?

18 A. I believe so, yes, sir.

19 Q. And what is it that prevents somebody
20 from walking down the hall, looking through that
21 window, never entering her office, and looking
22 straight through her office, which is not -- none
23 of these are that you know -- through the glass
24 window that views the -- views the dressing room?

25 MR. STAIR: Object to the form.

1 MR. DUKES: Object to the form.

2 A. If you had access to that -- what I call
3 entry vestibule -- and, again, if things were
4 aligned just right, it is possible to look
5 through that window in that door, through that
6 window in the women's coach's office, into the
7 dressing room, yes, sir.

8 Q. You said if you had access. What would
9 keep anybody from having access to that hallway?

10 A. Well, in this case --

11 MR. DUKES: Object to the form.

12 A. -- that particular door would have --
13 would prevent somebody from having access to it.
14 (Indicating.)

15 Q. How does it do that?

16 A. It's open. If it was closed, you
17 wouldn't have access to it.

18 Q. Well, that's different. It was closed
19 and secured.

20 A. You asked me what would prevent
21 somebody?

22 Q. Yeah.

23 A. A closed door.

24 Q. A closed door and locked door.

25 MR. STAIR: Object to the form.

1 MR. DUKES: Object to the form.

2 A. A closed and locked door, yes, sir.

3 Q. And what are the fire requirements about
4 that?

5 MR. STAIR: Object to the form.

6 A. Well, it's an exit. So the lever handle
7 would have to be that you could exit through
8 there without being locked. You couldn't lock
9 it.

10 Q. And be in compliance with fire safety
11 requirements.

12 A. Correct.

13 Q. You could lock it, but you couldn't --

14 A. You could, that's right.

15 Q. I think that's it for No. 16.

16 Now, next, please, I want to ask you
17 this: You testified earlier that the windows
18 were put in for security purposes.

19 Is that the way you said it?

20 A. Yes, sir.

21 Q. And would you agree with me that it's
22 possible to design a dressing room with security
23 features that are less intrusive on the privacy
24 and dignity of the persons changing clothes in
25 that dressing room facility than the viewing

1 windows?

2 MR. STAIR: Object to the form.

3 MR. DUKES: Object to the form.

4 A. It may be possible, yes, sir. I would
5 agree with it may be possible.

6 Q. And are you -- I don't understand your
7 answer. If you could tell me your degree of
8 confidence that that could be done, I'd
9 appreciate it.

10 MR. STAIR: Object to the form.

11 MR. DUKES: Object to form.

12 A. I'm not sure. I'm not sure what's
13 available. I mean, there's -- there may be -- I
14 hate to use the word "cameras" because cameras
15 would be just as intrusive, maybe more so, than
16 viewing windows. I'm not sure about audio. I'm
17 not sure if audio would work. So I -- is it
18 possible? It might be, but I'm not sure.

19 Q. But it wasn't -- whatever, it wasn't
20 done in the Bishop England instance.

21 MR. STAIR: Object to the form.

22 A. Correct.

23 Q. I understand.

24 Now, you just used a word I wanted to
25 ask you about. You used the word "intrusive."

1 Do you agree that looking at unclothed students,
2 minors, high school age people, is intrusive as
3 to that?

4 MR. DUKES: Object to the form.

5 MR. STAIR: Object to the form.

6 (Interruption.)

7 Q. Did you get the --

8 A. No. You're going to have to repeat
9 that. Or read it.

10 Q. I will.

11 You used the word "intrusive." I want
12 to ask you about that. Do you agree that looking
13 at unclothed students, minors, high school age
14 people, is intrusive as to that?

15 MR. STAIR: Object to the form.

16 MR. DUKES: Object to the form.

17 A. Could be.

18 Q. What is your opinion as to whether it's
19 intrusive or not?

20 MR. STAIR: Object to the form.

21 MR. DUKES: Object to the form.

22 A. I suppose if there was an intentional
23 reason for doing so, other than security reasons,
24 one might consider that intrusive.

25 Q. How about the person viewed? Would it

1 have to be the same circumstance limited that you
2 just described?

3 MR. DUKES: Object to the form.

4 MR. STAIR: Object to the form.

5 A. I'm not following your question.

6 Q. Yeah.

7 A. Person who --

8 Q. When is it okay to look at naked
9 children?

10 MR. DUKES: Object to the form.

11 MR. STAIR: Object to the form.

12 A. I'm not sure I can give you an answer to
13 when it's okay to look at naked children.

14 Q. Well, you just said --

15 A. When you're giving them a bath maybe.

16 Q. Maybe. Let's clarify it. This will
17 take a little while.

18 When is it okay to look at high school
19 students who are minors, for the most part,
20 almost -- almost entirely but who are teenagers
21 and are using a dressing room/locker room
22 facility for purposes of dressing or undressing
23 or changing their dressing and are, therefore,
24 sometimes completely clothed, sometimes partially
25 clothed, and sometimes completely naked? When is

1 it okay to look at those children?

2 MR. STAIR: Object to the form.

3 A. I guess the process of changing from
4 street clothes to gym clothes in the attempt to
5 prevent fighting, horseplay, one student injuring
6 another would be -- it's okay to -- to view
7 through that window to make sure that doesn't
8 occur. That -- that, to me, is why I think
9 it's -- the window was put there.

10 And so when is it okay to look through
11 it? When they're changing the clothes to make
12 sure that no horseplay, fighting, activities that
13 could injure somebody. That's why the window's
14 there. That's when it's okay to look through the
15 window.

16 Q. Change the example from a locker room
17 window to a bathroom. When is it okay to look at
18 those same class of students that I just went
19 through with you in a bathroom?

20 MR. DUKES: Object to the form.

21 MR. STAIR: Object to the form.

22 A. As -- as you said to me earlier, I don't
23 know that I can say there's any time to look
24 through -- look through a window at somebody in
25 the bathroom because the activities that go on in

1 the bathroom are different than the activities
2 that go on when you're changing your clothes from
3 your street clothes to your gym clothes in
4 preparation for gym class.

5 So I can't think of any time that it
6 would be okay to look through a bathroom window
7 at somebody using the bathroom. Different --
8 different circumstances.

9 Q. I didn't ask you about using the
10 bathroom. I asked you about somebody being in
11 the bathroom, and you can suppose for the
12 purposes of this question that that person is
13 changing clothes in the bathroom. It's okay to
14 look through the bathroom window at that person?

15 MR. DUKES: Object to the form.

16 MR. STAIR: Object to the form.

17 A. No, sir.

18 Q. What's the dividing line, then, between
19 changing clothes in the bathroom and changing
20 clothes in the locker room?

21 MR. DUKES: Object to the form.

22 MR. STAIR: Object to the form.

23 A. Again, the dividing line for me is there
24 was an anticipation that there might be horseplay
25 in a dressing room. There are multiple students

1 at the same time going through the activity of
2 changing from street clothes to gym clothes. So
3 the chances of horseplay, fighting, bullying
4 exist. The window was placed there in an attempt
5 to prevent that. You don't anticipate that in a
6 bathroom.

7 Q. Who told you that?

8 A. People go into a bathroom usually to use
9 the bathroom. Occasionally, you might change
10 your clothes in the bathroom; but most of the
11 time, people go into a bathroom to use the
12 facilities. So you don't put windows in a place
13 where somebody uses the -- the toilet facilities.

14 In this case, it was an activity of
15 changing clothes to prepare for a gym class or a
16 football practice or baseball practice or
17 whatever it was. And the potential exists for
18 those children to bully one another, to tease one
19 another, to fight with one another, to slam
20 somebody into a locker room -- a locker, to do
21 things that the supervisors, the teachers, the
22 parents don't want.

23 And so that's why the window was placed
24 in that. So the difference is there -- a
25 potential exists, and so you're trying to prevent

1 from that potential activity happening.

2 Q. Now, do you think that things don't
3 happen in a bathroom facility, other than
4 utilizing the toilet or urinal and washing your
5 face and hands?

6 MR. STAIR: Object to the form.

7 MR. DUKES: Object to the form.

8 A. No, sir. I think it's possible, yes,
9 sir.

10 Q. Where do children -- you can narrow it
11 down as far as you feel like you can at Bishop
12 England High School. Where do they smoke in the
13 middle of the day? Do you know that?

14 MR. DUKES: Object to the form.

15 MR. STAIR: Object to the form.

16 A. I do not.

17 Q. Do you know that they smoke in the
18 bathroom?

19 MR. STAIR: Object to the form.

20 A. I do not.

21 Q. Do you know that they smoke in the
22 locker room?

23 MR. STAIR: Object to the form.

24 MR. DUKES: Object to form.

25 A. I do not.

1 Q. And one of the things earlier, I think
2 you said they wanted to guard against was smoking
3 or maybe it's not actually written, then put it
4 in paren.

5 Let's assume for the sake of this
6 question that the children from time to time
7 smoke illegal drugs in the bathroom. Do you
8 think that happens from time to time?

9 MR. STAIR: Object to the form.

10 MR. DUKES: Object to the form.

11 A. It's possible, yes, sir.

12 Q. I know it's possible. I just asked you
13 if you think that it happens?

14 A. I don't think about that.

15 MR. STAIR: Object to the form.

16 MR. DUKES: Object to the form.

17 Q. Have to now because I posed the question
18 to you.

19 A. Do I think it happens? It could happen,
20 yes, sir.

21 Q. I didn't ask if it could. I asked you
22 if you think it happens?

23 A. Yes, sir.

24 MR. STAIR: Object to the form.

25 MR. DUKES: Object to the form.

1 Q. It does happen, doesn't it?

2 MR. STAIR: Object to the form.

3 A. I don't know for an absolute fact that
4 it happens at Bishop England High School. I
5 can't answer that.

6 Q. I didn't ask you Bishop England High
7 School specifically. I just asked you if
8 children smoke drugs in bathrooms.

9 MR. STAIR: Object to the form.

10 Q. High schools.

11 MR. STAIR: Object to the form.

12 A. Yes.

13 Q. And do they swap drugs in bathrooms?

14 MR. STAIR: Object to the form.

15 MR. DUKES: Object to the form.

16 A. I don't know.

17 Q. And is there a reason why there would be
18 swapping drugs, for example, in a locker room as
19 opposed to a bathroom?

20 MR. STAIR: Object to the form.

21 MR. DUKES: Object to the form.

22 A. I don't know. You'd have to ask the
23 people swapping the drugs.

24 Q. But you know in your own mind that it's
25 okay to look at naked children in a locker room

1 but not in a bathroom?

2 MR. STAIR: Object to the form.

3 MR. DUKES: Object to the form.

4 Q. Isn't that what you testified to?

5 MR. STAIR: Object to the form.

6 MR. DUKES: Object to the form.

7 A. That's not what I testified to.

8 Q. I'm sorry.

9 A. Your question was to me when is it okay
10 to do one or the other? And I gave you my
11 thoughts on when it's okay to do one or the
12 other.

13 Q. And your thoughts are that you can never
14 look at students in a bathroom. Is that what --

15 MR. STAIR: Object to the form.

16 MR. DUKES: Object to the form.

17 Q. -- where you came down ultimately?

18 MR. STAIR: Object to the form.

19 A. No, sir.

20 Q. Would you say, again, please? Because
21 I'm confused about your answer. When is it okay
22 to view children -- high school students -- in a
23 bathroom?

24 A. I didn't say it was okay.

25 MR. STAIR: Object to the form.

1 MR. DUKES: Object to the form.

2 Q. Well, we'll just have to go back. This
3 is confusing. Bishop England High School has
4 locker rooms; correct?

5 A. Yes, sir.

6 Q. And the children in those locker rooms
7 have their privacy invaded if someone looks at
8 them nude.

9 Do you agree with that?

10 MR. STAIR: Object to the form.

11 MR. DUKES: Object to the form.

12 A. Yes.

13 Q. And in the bathroom -- Bishop England
14 also has bathrooms, and those children in the
15 bathrooms have their privacy invaded if someone
16 looked at them in the bathroom.

17 MR. STAIR: Object to the form.

18 MR. DUKES: Object to the form.

19 Q. Do you agree with that or not?

20 MR. STAIR: Object to the form.

21 A. Yes, sir.

22 Q. And can you tell me what the
23 disciplinary policy, if you know this -- I don't
24 know whether you've seen this or not. We have.

25 Can you tell me what the disciplinary

1 policy is? For what events merit what level of
2 attention? Do you happen to know that?

3 A. I cannot.

4 MR. STAIR: Object to the form.

5 MR. DUKES: Object to the form.

6 Q. Okay. All right.

7 MR. RICHTER: Well, time for a
8 comfort break, for sure. Okay. I'm not going to
9 be quite as fast as you are -- as you were, I
10 should say, Kent, but I will be fast.

11 (Recess taken 4:03 p.m. to 4:15 p.m.)

12 MR. RICHTER: I think we can close
13 up. Let me just close some ends quickly.

14 BY MR. RICHTER:

15 Q. I'm not sure we ever got to the end of
16 this. You may have, and I may have just missed
17 it. I was asking you about the word "intrusive."
18 And we talked about that, I think, through a
19 series of a few questions.

20 And would it be -- is there any
21 reason -- well, do you agree that not looking at
22 the students but going to the dressing room door
23 and announcing yourself, making them empty the
24 dressing room, you going in the dressing room
25 after announcing yourself as an official, would

1 that be less intrusive on the students if you --

2 MR. DUKES: Object to the form.

3 MR. STAIR: Object to the form.

4 A. Less intrusive than viewing the students
5 through a window?

6 Q. Yeah.

7 A. Yes, sir.

8 Q. Thank you.

9 MR. RICHTER: I think I can quit at
10 that point.

11 What happens is we always remember,
12 as you will remember some thing that you will
13 say, "I wish I would have remembered earlier."
14 We do the same thing.

15 These fellows have the right to
16 examine you; and you are representing him, Kent.
17 Do you -- would you like to explain to him his
18 right to read and sign?

19 MR. STAIR: Yeah. Yeah. You do
20 have a right to read and sign the deposition.
21 We'll take that opportunity. So you can just
22 send it to me. We'll take care of that, yeah.

23 MR. RICHTER: You understand?

24 THE WITNESS: I do. And I do not
25 want to read and sign.

1 MR. RICHTER: Off the record.

2 MR. STAIR: We'll make that
3 decision and let you know, but it may not happen.
4 It may; but we'll reserve the right. So send it
5 to me to sign.

6 MR. DUKES: Do you want to go?

7 MR. STAIR: Probably it's your
8 turn.

9 EXAMINATION

10 BY MR. DUKES:

11 Q. Roger, I just have a blessed few
12 questions. Promise.

13 I just want to confirm that it's LS3P's
14 position that the design of Bishop England High
15 School complied with the applicable standard of
16 care in every respect.

17 MR. RICHTER: Object to the form of
18 the question.

19 A. Yes, sir. I believe it did, yes, sir.

20 Q. And I think you testified in the
21 beginning of today that, in your experience,
22 Roger Attanasio's experience -- Attanasio.
23 Sorry. Experience, locker room -- windows from a
24 coach's office into the locker room is an
25 extremely common feature; is that correct?

1 A. Yes.

2 Q. Every school you've ever done in 30
3 years has had windows into the locker room?

4 A. Yes.

5 MR. DUKES: That's all I have. I'm
6 going to stop there.

7 MR. STAIR: I have just a couple.

8 EXAMINATION

9 BY MR. STAIR:

10 Q. Mr. Attanasio, you mentioned some people
11 with LS3P that you spoke with in preparation for
12 this deposition. You did not mention Mark
13 Clancy.

14 Did you also speak with him prior to the
15 first deposition?

16 A. I believe I did, yes. That's -- that is
17 correct. I think I did, but I'm not sure. I
18 don't recall if Mr. Clancy was about Bishop
19 England High School or Bishop England Auditorium.
20 My mind is not clear on that.

21 MR. STAIR: Thank you.

22 MR. RICHTER: That's the only
23 questions.

24 MR. STAIR: Yeah.

25

1 REEXAMINATION

2 BY MR. RICHTER:

3 Q. I just want to make sure we leave here
4 with a clear understanding 'cause I don't have
5 one yet; and if you've answered this clearly, I'm
6 going to have to ask you to say it again so I can
7 leave here with a clear understanding.

8 The viewing windows in the three locker
9 rooms at Bishop England High School that we've
10 been discussing here today and started when you
11 were last here -- started or trying to start a
12 discussion about that same three windows, can you
13 tell me, please, whose idea it was to place those
14 viewing windows where they were placed looking
15 into three locker rooms/dressing room facilities?

16 A. I cannot.

17 Q. Was it LS3P's idea, or was it the idea
18 of the owner of -- or person who hired LS3P? The
19 Diocese?

20 A. I cannot answer that with 100 percent
21 degree of certainty.

22 Q. Well, whatever degree of certainty.

23 A. I do not know who. I can't answer that
24 question. I do not know.

25 Q. Yet you're the person who LS3P has

1 designated to tell us about planning, design, all
2 of the things that we --

3 MR. DUKES: Objection.

4 Q. -- have been going through, and you
5 don't know whose idea it was to put viewing
6 windows to view thousands of children?

7 MR. DUKES: Object to form.

8 MR. STAIR: Object to the form.

9 A. I can tell you placing the window
10 between a coach's office and a locker room is a
11 common practice. So this school was designed
12 just like we have designed many other schools
13 with that same window.

14 If there was a desire not to have it, I
15 don't -- I have not found any documentation that
16 said, "Please don't put it there." So the window
17 was placed there.

18 I'm sure there were meetings that
19 discussed the window or discussed the design of
20 the school, and I can find no objections to
21 having the window there. But to answer the
22 question, who made the decision? I'm sorry,
23 Mr. Richter, but I can't do that today.

24 Q. Well, what does that mean today? When
25 can you do it?

1 A. I can't. I don't know when I'll be able
2 to do it. I don't know if there's anybody I
3 could ask that can refer back to a set of meeting
4 minutes that I've not been able to see that said,
5 "Yes, put a window there" or "no, don't put a
6 window there." I haven't seen that.

7 Q. And how many meeting minutes have you
8 reviewed?

9 A. Whatever we presented to you. I don't
10 know how many I looked at. It was in that set of
11 documents 'cause I looked at those documents.

12 Q. And -- but it happened, and it
13 happened --

14 A. There -- there was a window placed
15 there, yes, sir.

16 Q. It was placed pursuant to a design that
17 LS3P made?

18 A. Correct. The window was installed by
19 someone with Gulf Stream or a subcontractor of
20 Gulf Stream in accordance with the contract
21 documents, yes, sir.

22 Q. And the contract documents included the
23 plans and specifications that LS3P drew; correct?

24 A. Correct.

25 Q. And what --

1 MR. RICHTER: Okay. That's all I
2 need. Thank you.

3 (The deposition concluded at 4:23 p.m.)

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1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF HORRY

4 I, Ronda K. Blanton, a Registered
5 Professional Reporter and Notary Public for the
6 State of South Carolina at Large, do hereby
7 certify that the witness in the foregoing
8 deposition was by me duly sworn to testify to the
9 truth, the whole truth, and nothing but the truth
10 in the within-entitled cause; that said
11 deposition was taken at the time and location
12 therein stated; that the testimony of the witness
13 and all objections made at the time of the
14 examination were recorded stenographically by me
15 and were thereafter transcribed by computer-aided
16 transcription; that the foregoing is a full,
17 complete, and true record of the testimony of the
18 witness and of all objections made at the time of
19 the examination; and that the witness was given
20 an opportunity to read and correct said
21 deposition and to subscribe the same.

22 Should the signature of the witness not be
23 affixed to the deposition, the witness shall not
24 have availed himself/herself of the opportunity
25 to sign or the signature has been waived.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal on August 30, 2021, at Myrtle
Beach, Horry County, South Carolina.

Ronda K. Blanton
NCRA REGISTERED PROFESSIONAL
REPORTER, RPR
Notary Public,
State of South Carolina at Large
My Commission expires:
May 15, 2028.

1 DEPONENT CORRECTION SHEET
2 I, the undersigned, ROGER M. ATTANASIO, do hereby
3 certify that I have read the foregoing deposition
and wish to make the following clarifications
and/or corrections, if any.

4	PAGE	LINE	CHANGE	REASON
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20	ROGER M. ATTANASIO	Date
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RB

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2:21-cv-00613-RMG Date Filed 12/13/21 Entry Number 67-3 Page 1 of 48

EXHIBIT 3

Deposition of Patrick Finneran

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF SOUTH CAROLINA
3 CHARLESTON DIVISION

4 DEPOSITION OF PATRICK FINNERAN

5 OCTOBER 5, 2021

6 GARY NESTLER, VIEWED STUDENT FEMALE 200, VIEWED
7 STUDENT MALE 300, on behalf of themselves and all
8 others similarly situated,

9 Plaintiffs,

10 vs. CASE NO. 2:21-cv-0613-RMG

11 THE BISHOP OF CHARLESTON, A CORPORATION SOLE;
12 BISHOP ENGLAND HIGH SCHOOL; TORTFEASORS 1-10; THE
13 BISHOP OF THE DIOCESE OF CHARLESTON, in his
14 official capacity; and ROBERT GUGLIELMONE,
15 Individually,

16 Defendants.
17
18
19

20 TIME: 9:10 AM

21 LOCATION: THE RICHTER LAW FIRM
22 MOUNT PLEASANT, SOUTH CAROLINA
23
24

25 REPORTED BY: RONDA K. BLANTON, RPR
CLARK & ASSOCIATES, INC.
CHARLESTON, SC 29422
843-762-6294
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1 A P P E A R A N C E S

2 ON BEHALF OF THE PLAINTIFFS:

3 THE RICHTER FIRM

4 BY: LAWRENCE E. RICHTER, JR., ESQ.

5 ANNA RICHTER, ESQ.

6 622 Johnnie Dodds Boulevard

7 Mount Pleasant, SC 29465

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9 BY: DANIEL SLOCHIVER, ESQ.

10 751 Johnnie Dodds Boulevard, Suite 100

11 Mount Pleasant, SC 29464

12 HALVERSEN & ASSOCIATES

13 BY: BRENT S. HALVERSEN, ESQ.

14 751 Johnnie Dodds Boulevard, Suite 200

15 Mount Pleasant, SC 29464

16 ON BEHALF OF THE DEFENDANTS THE BISHOP OF
17 CHARLESTON, BISHOP ENGLAND HIGH SCHOOL, THE
18 BISHOP OF THE DIOCESE OF CHARLESTON, AND ROBERT
19 GUGLIELMONE:

20 TURNER PADGET GRAHAM & LANEY

21 BY: RICHARD S. DUKES, ESQ.

22 40 Calhoun Street, Suite 200

23 Charleston, SC 29401

24 - - -

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1 PATRICK FINNERAN,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MR. SLOTCHIVER:

6 Q. Could you state your full name for the
7 record?

8 A. Patrick Finneran, F-I-N-N-E-R-A-N.

9 Q. Mr. Finneran, we met a few minutes ago.
10 I'm Dan Slotchiver; and I'm one of the lawyers
11 involved in the case captioned Tuition Payer 100,
12 Viewed Student Female 200, Viewed Student Male
13 300 on behalf of themselves and all similarly
14 situated versus the Bishop of Charleston, a
15 corporation sole; Bishop England High School;
16 Tortfeasors 1 - 10; the Diocese of Charleston in
17 its official capacity, and Robert Guglielmone,
18 individually.

19 MR. DUKES: Guglielmone.

20 MR. SLOTCHIVER: I'll get that.

21 MR. DUKES: And it's not captioned
22 that anymore. Because you all --

23 MR. SLOTCHIVER: Understood.

24 Q. And I'm going to take your testimony
25 with reference to knowledge that you have to the

1 pertinent place we are at this stage in
2 litigation.

3 Have you given your deposition before?

4 A. Yes, sir.

5 Q. In what scenario have you given a
6 deposition before?

7 A. A different lawsuit.

8 Q. What was -- what kind of lawsuit was
9 that?

10 A. It was an employee, former employee.

11 Q. Is that the only time that you've given
12 your deposition?

13 A. Yes, sir.

14 Q. Who was that former employee?

15 A. Elizabeth Cox.

16 Q. Today I'm going to ask you a series of
17 questions, and it's probably nothing different
18 than what happened last time. The facts are
19 different, but I'm going to ask you to answer to
20 the best of your ability.

21 A. Yes, sir.

22 Q. I'm going to ask you to answer orally.

23 A. Yes, sir.

24 Q. If you nod your head or if you say
25 uh-huh or huh-uh, the problem is that the court

1 reporter can't take it down. So I'm not going to
2 be trying to chastise you. I'm going to remind
3 you if you do that so we have an accurate record.

4 A. Yes, sir.

5 Q. Fair enough?

6 A. Yes, sir.

7 Q. Is there any reason why today would not
8 be the ideal day for you to give your deposition?

9 A. No, sir.

10 Q. And as I understand it, you are the
11 principal at Bishop England High School?

12 A. Yes, sir.

13 Q. I'm going to jump ahead for a moment.
14 Then I'm going to backtrack because I think it
15 may help us move quicker in addressing the issues
16 that I want to cover today.

17 I'm going to show you a document marked
18 "press release" and ask if you've seen this
19 document before. Take the time and read it all,
20 if you want.

21 A. Yes, sir. (Complies with request.)

22 Yes, sir. I've seen this before.

23 Q. And are the facts stated in this press
24 release, to your knowledge, accurate?

25 A. To my knowledge, yes.

1 Q. And Maria -- and I may -- is it Aselage?

2 A. Aselage.

3 Q. She is the Director of Media Relations
4 for the Diocese; is that correct?

5 A. Yes, sir.

6 Q. And the Diocese owns Bishop England;
7 correct?

8 A. Yes.

9 Q. And she's been -- to your knowledge, she
10 was involved prior to your tenure at Bishop
11 England?

12 A. Yes, sir.

13 Q. And you've been at Bishop England for
14 how long?

15 A. This is my ninth school year.

16 Q. Were you involved in any way with the
17 creation of this press release?

18 A. A little. Not a lot. Just -- just -- I
19 read through it after they had set it up and said
20 it was accurate.

21 Q. I didn't mean did you write it.

22 A. Yeah.

23 Q. But the content of it, you were involved
24 in discussing it or reviewing it -- or I'll say
25 it differently.

1 I believe what you're saying is that you
2 were involved in agreeing that it was correct?

3 A. Yes.

4 MR. SLOTCHIVER: Can we mark that
5 as an exhibit, please.

6 (Exhibit No. 01 was marked for
7 identification.)

8 Q. And we're going to come back to this a
9 little bit later. I'm just trying to dot some
10 I's and cross some T's. That might help us.

11 The next one I wanted to jump into
12 before we back up and talk more about yourself
13 and your involvement is the windows that are in
14 the locker rooms.

15 Do you recall receiving correspondence
16 advising you not to alter the windows?

17 A. I do not.

18 Q. I'm going to hand you a copy of --

19 MR. SLOTCHIVER: And if I need
20 more -- I did not make extra copies. Do you
21 mind?

22 MS. RICHTER: Yeah.

23 MR. SLOTCHIVER: Give us one
24 second. I think that's the only thing I didn't
25 make extra copies of, but I think this will help

Deposition of Patrick Finneran

9

1 us in moving forward.

2 BY MR. SLOTCHIVER:

3 Q. Well, let me ask you first. Is your
4 email PFinneran@BEHS.com?

5 A. Yes.

6 Q. Let me hand you a copy of a letter
7 that's addressed to that email and ask if you
8 recall or if this -- seeing this document
9 refreshes your recollection as to having seen --

10 MR. DUKES: And I'm going to ask
11 the witness to step outside with me, and we're
12 going to go over this document.

13 MR. SLOTCHIVER: You're welcome to
14 do it.

15 (A recess was taken 9:19 a.m. to 9:20 a.m.)

16 BY MR. SLOTCHIVER:

17 Q. So, Mr. Finneran, did you have an
18 opportunity to speak to your counsel about this
19 letter?

20 A. Yes.

21 Q. And this letter is dated May 7 of 2019?

22 A. Yes. It's on the top.

23 Q. And it's sent to your email from the
24 Richter Firm?

25 A. I would -- I don't know if it was in my

1 email. I couldn't tell you. I don't remember
2 getting it; but if it says it was, I don't know.

3 Q. Well, if -- there may be opportunities
4 where you'll have an opportunity to speak out
5 and -- to step out and speak with your lawyer if
6 a document comes up you haven't seen. I don't
7 think there will be another one. But if it does,
8 you understand you're limited to conversations
9 about the document that you're going to be asked
10 about?

11 A. Yes.

12 Q. Have you had a chance to read this
13 document?

14 A. I have not.

15 Q. Why don't you take a moment to -- what
16 were you doing when you went outside if you
17 weren't reading the document?

18 MR. DUKES: He doesn't have to
19 answer that question.

20 MR. RICHTER: Well, that's not
21 true. He didn't ask to -- answer and he didn't
22 ask him about the substance of conversations
23 between you and him. I don't have a right to say
24 that.

25 Q. I was just asking you what were you

1 doing outside?

2 A. We were talking.

3 Q. So just -- you went outside regarding
4 this letter that's in front of you?

5 A. Uh-huh.

6 Q. You were outside for a few minutes. You
7 came back in. You were talking, but you haven't
8 read the letter?

9 A. No.

10 Q. Why don't you take the time now to read
11 the letter.

12 A. (Complies with request.) Okay.

13 Q. You've had a chance to read it?

14 A. Yes.

15 Q. Mr. Finneran, can you tell me why,
16 despite this spoliation letter, that evidence was
17 not preserved?

18 A. I don't understand your question.

19 Q. This letter is called a spoliation of
20 evidence letter.

21 A. Yes.

22 Q. And basically it means we're giving you
23 an instruction not to spoil the evidence, not to
24 alter it, change, redact, lose evidence. Okay?

25 A. Yes, sir.

1 Q. And do you understand that one of the
2 pieces of evidence that this letter is referring
3 to in particular pertains to the windows in the
4 locker rooms which look -- the windows in the
5 coaches' offices which look into the locker room?

6 A. Can you show me where in the letter it
7 says that?

8 Q. Paragraph -- first page. "A, documents,
9 data, intangible things, evidence in the child
10 sex abuse/voyeurism, and any and all illegal acts
11 of Jeffrey Alan Scofield and/or other employees
12 or agents of the Diocese who have committed
13 similar acts in, on, or around Diocese facilities
14 or involving students of Diocese and schools,
15 including but not limited to schools and
16 facilities that are specifically designed and
17 configured to provide viewing areas of less than
18 fully-clothed minors."

19 Would you agree that -- with me that the
20 school was designed in a manner where there were
21 viewing areas available of less than fully-
22 clothed minors?

23 A. Can -- can I go back to the question? I
24 understand what A says, but then the paragraph
25 on -- the second to last paragraph on page 2, for

1 the purpose of notice, documents, data, and
2 intangible things include --

3 MR. RICHTER: I'm sorry. I
4 couldn't understand you.

5 A. The second to last paragraph on page 2,
6 "For the purpose of this notice, documents, data,
7 and intangible things include but is not limited
8 to records, files, correspondence, reports,
9 memoranda, calendars, diaries, minutes,
10 electronic messages, voicemails, emails,
11 telephone message records or logs, computer
12 network activity logs, hard drives, backup data,
13 removable computer storage data such as tapes,
14 disks and cards, documents in the files, web
15 pages, database, spreadsheets, software, books,
16 ledgers, journals, orders, invoices, bills,
17 vouchers, checks, statements, worksheets,
18 summaries, compilations, computations charged,
19 diagrams, graphic presentations, drawings, films,
20 charts, digital or chemical process, video,
21 phonographic tape, or digital records or
22 transcript thereof, drafts, jottings, and notes."
23 So I don't --

24 Q. So I think what you're reading to me --
25 you're -- stating on page 2 is a list that is

1 different than the list on page 1 under
2 subcategory A?

3 A. But it says "for the purpose of this
4 notice," that's what those things are.

5 Q. Right. Well, let's look at the first
6 page. The documents, data, intangible things
7 subject to this notice include but are not
8 limited to the following. On the first page.

9 So have you decided that you would
10 follow the -- that you would interpret this
11 letter to mean that we can disregard everything
12 on page 1 Subsection A and instead replace it
13 with the paragraph on the second page?

14 A. I -- I mean, I guess I just -- the
15 confusion is, is it does not say "windows." And
16 that's where I asked where it says "windows" in
17 there.

18 Q. On the very first page of the document,
19 Subsection A.

20 A. Okay. So we'll agree to disagree, I
21 guess, on that part of it.

22 Q. Are we disagreeing that the document
23 refers to windows in Subsection A?

24 A. Well, if you read further on that second
25 paragraph, it doesn't mention -- it talks all

1 about documents but not actually physically the
2 building itself.

3 Q. So in one part of the letter, it talks
4 about the documents include the windows and
5 another part of the letter it doesn't include the
6 windows. Is that where the hang-up is? Trying
7 to reconcile the difference?

8 A. Yes.

9 Q. It doesn't mean that the document
10 doesn't -- okay. Is there a reason why the
11 windows were altered despite having received this
12 letter?

13 A. So at this time the windows were boarded
14 up because we had some concerns from parents; and
15 so after a year of them being boarded and having
16 the boards on the windows, we decided to go ahead
17 and brick them in because it was a -- somewhat of
18 an eyesore.

19 Q. What parents gave you concerns?

20 A. Just feedback that I get from parents.
21 I could not tell you their names at this point.

22 Q. When did that feedback come in?

23 A. After the original statement was made.

24 Q. All right. After which --

25 A. The original statement -- not this one,

1 but a statement about Mr. Scofield's arrest.

2 Q. So after Mr. Scofield's arrest took
3 place is when parents learned about the fact
4 there are windows in the coaches' office looking
5 into the locker rooms?

6 MR. DUKES: Object to the form.

7 A. I don't know if that's when they learned
8 about it, but there were some concerns about it
9 at that point.

10 Q. Do you have knowledge that the parents
11 were aware of the fact windows were in the
12 coaches' office looking into the locker rooms
13 before that?

14 A. I do not.

15 Q. This isn't the only letter that you
16 received, which I'll call -- which is called a
17 spoliation letter. You've received other
18 correspondence advising you not to destroy or
19 alter the windows; isn't that correct?

20 A. I -- I don't remember.

21 Q. I'll represent to you that in a -- in a
22 different meeting, there was communications given
23 between your lawyer --

24 MR. DUKES: Object to the form.

25 Q. -- and this is -- between your lawyer

1 and the counsel in this case addressing the fact
2 that he himself had written a letter --

3 MR. DUKES: That's not what I said,
4 and that's --

5 Q. -- advising not to alter. Is that not
6 correct?

7 MR. DUKES: I'm going to instruct
8 him not to answer that question because it's
9 covered by the attorney-client privilege.

10 Q. Do you dispute having received any other
11 letters regarding not altering windows?

12 A. I just don't recall.

13 Q. Fair enough.

14 MR. SLOTCHIVER: Let's mark this as
15 an exhibit, please.

16 (Exhibit No. 02 was marked for
17 identification.)

18 Q. Was the decision to board up the windows
19 based solely on the parents' concerns?

20 A. Yes.

21 Q. It had nothing to do with meetings with
22 the superintendent?

23 A. I mean, it -- it was probably part of
24 discussion with them, the concerns from parents.
25 We were not instructed to board the windows up,

1 no. That decision was made to -- 'cause our
2 parents were concerned.

3 Q. And you don't recall which parents came
4 and addressed any concerns with you?

5 A. I don't.

6 Q. Do you have notes to reference that
7 anywhere?

8 A. I do not.

9 Q. When you -- who did the parents complain
10 to that they were concerned?

11 A. Some came to myself. Some came to
12 Miss Tucker, who is the associate principal.
13 Some came to Miss Aselage, who at that time gave
14 a press release on the Scofield arrest.

15 Q. And what did they say to you?

16 A. Just that they're concerned of how many
17 kids and -- and where it was and it just -- they
18 were worried about the window so we --

19 Q. Well, let's back it up a minute.

20 About how many kids? How many kids
21 what?

22 A. So there was a concern. When
23 Mr. Scofield was arrested, we contacted the
24 parents that we knew that students were on the
25 iPad; and so there was some concern or some

1 confusion in our press release. We said we
2 contacted those families. So families were
3 calling in, wanted to know if their child was;
4 and they were not.

5 Q. So because parents were calling in
6 wondering if their child was filmed, you decided
7 to board up the windows?

8 A. They were concerned. I mean, it was
9 just their concern of having the windows in
10 there. They didn't serve a purpose. The blinds
11 were always closed. So we boarded them up.

12 Q. We'll come back to that in a moment.

13 Give me your background, if you will.
14 Where are you from?

15 A. I grew up in Wheeling, West Virginia.
16 Actually, I was born in Sandusky, Ohio. Grew up
17 in Wheeling, West Virginia. Graduated from
18 St. Francis University in Pennsylvania. Worked
19 in insurance for five years and then left that
20 and spent a year of discernment for the
21 priesthood and taught and coached during that
22 time at Madonna High School.

23 And then from there I went to
24 St. Joseph's Central Catholic in Huntington and
25 then Springfield central catholic -- Catholic

1 Central as principal, another school, and then
2 down here as principal of Bishop England High
3 School.

4 Q. So when you came here, you were hired as
5 principal?

6 A. Yes, sir.

7 Q. And in any of your historical jobs, have
8 you had any involvement in construction?

9 A. No.

10 Q. Or design?

11 A. No.

12 Q. In any of the other schools you've been
13 involved with, had you ever been in a gym or in a
14 locker room where the coaches' offices overlooked
15 the inside of a locker room?

16 A. Yes.

17 Q. Were there blinds?

18 A. In some, yes. In some, no. I coach
19 girls' basketball as well.

20 Q. Were there instructions in those areas
21 that the school -- where the school authorized
22 and instructed teachers to monitor the inside of
23 the locker room?

24 A. I mean, there were never in my school.
25 So we never had a coach observation in my school.

1 So I don't know what the visiting teams -- what
2 schools we went to had locker rooms, I don't know
3 what their instruction would be.

4 Q. And what year did you come to Bishop
5 England?

6 A. 2013.

7 Q. When you came to the school, did you
8 have an opportunity to walk through the entire
9 campus?

10 A. Yes, sir.

11 Q. Did you walk into the locker rooms?

12 A. I'm sure eventually but not initially,
13 no.

14 Q. When you walked into the -- did you have
15 an opportunity to walk into the locker rooms
16 before the Scofield arrest took place?

17 A. Yes, sir.

18 Q. And before the Scofield information
19 became public?

20 A. Yes, sir.

21 Q. When you went into the locker rooms or
22 into the coach -- you went in the coaches' office
23 also. Is that fair to say?

24 A. Yes, sir.

25 Q. Did you ever have an opportunity or did

1 you ever notice the fact there were blinds on the
2 windows looking into the locker room?

3 A. Yes, sir.

4 Q. Was that shocking to you?

5 A. No, sir.

6 Q. Did you ever ask anybody why there were
7 blinds looking into the locker rooms?

8 A. No, sir.

9 Q. Did you ever think anything about it?

10 A. No, sir.

11 Q. Did it -- when I said was it shocking to
12 you, you said no. Did it -- did you pay any
13 attention to it, or was that just something you
14 saw and didn't think about until after the
15 Scofield event took place?

16 A. It was a common thing for -- most high
17 schools will have a locker room where the
18 coaches' office, if there are blinds -- or
19 windows into it.

20 Q. What is the basis of your giving an
21 opinion that it was a common thing?

22 A. 'Cause a lot of locker rooms I'd been in
23 from coaching girls' basketball have those in
24 them. The school I went to had windows.

25 Q. Had windows looking from the coaches'

1 office directly into the locker room?

2 A. With blinds as well.

3 Q. What kind of blinds?

4 A. The louver blinds like we had at Bishop
5 England.

6 Q. Why were those windows there in the
7 other locker rooms at the schools you went into?

8 A. I don't know.

9 Q. Do you know what the policies were about
10 coaches or staff being able to look into the
11 locker rooms?

12 A. I don't know.

13 Q. Do you know if those -- do you recall if
14 any of those locker rooms were accessible --
15 excuse me. If any of the coaches' offices were
16 accessible through the hallway as opposed to
17 through a separate entrance into the locker room?

18 A. I don't know. I don't remember.

19 Q. At Bishop England those coaches' offices
20 were accessible through the hallway?

21 A. Yes, sir.

22 Q. Have you ever viewed any students
23 through locker room windows?

24 A. No.

25 Q. In any of the schools you were in -- I

1 think you may have answered this. If you did, I
2 apologize.

3 But have you ever -- are you aware -- at
4 any of the schools that you have seen windows
5 that looked from the coaches' office into the
6 locker rooms, are you aware of the policies set
7 forth in those schools as to when or if you could
8 ever look through the blinds?

9 A. No, sir. I don't know what their
10 policies would be.

11 Q. You only know as to Bishop England?

12 A. Yes.

13 Q. The -- did you ever think about -- did
14 you ever question why it was that the windows
15 were in place in the locker room?

16 A. No, sir.

17 Q. Were you ever told when you came to the
18 school why the windows were placed into the
19 locker room?

20 A. No, sir.

21 Q. Did you ever consider the fact that
22 maybe the type of blinds that were used in the
23 locker rooms weren't the best kind of blinds to
24 be used?

25 A. No, sir.

1 Q. Would you agree with me that certain
2 blinds provide the ability to look without
3 anybody knowing you're looking and otherwise
4 don't?

5 A. I wouldn't know that. I mean, I -- I --

6 Q. Are you familiar with -- LS3P, the
7 architectural firm, has testified that the type
8 of blinds that were used in the coaches' office
9 at Bishop England provided the ability for people
10 in the coaches' office to look at the students in
11 the locker room in various states of dress or
12 undress without those students knowing they're
13 being looked at?

14 A. No, I don't know that. That was never
15 communicated to me.

16 Q. Would that surprise you?

17 A. That would surprise me, yes.

18 Q. If you had known that that was the fact,
19 would you have considered putting up different
20 type of blinds into the locker room so that you
21 could still effectuate the same safety that was
22 referenced in the press release but not give the
23 coaches or people in the coaches' office the
24 opportunity to look at the children without the
25 children knowing that they're being looked at?

1 A. Can you rephrase that for me? The
2 question?

3 Q. Sure.

4 Had it dawned on you that the type of
5 blinds that were being utilized at Bishop England
6 provided the ability of any person in the
7 coaching office to look at the children in the
8 locker room in various stages of dress or nude
9 without the children in the locker room knowing
10 they were being looked at? Would you have
11 altered the type of blinds in order to put a
12 different type of blind in the coaches' office
13 which would still provide the same safety without
14 providing that viewing ability?

15 MR. DUKES: Object to the form.

16 A. So I guess correct me in my
17 interpretation by trying to ask you this. If I
18 knew the blinds were an issue, would I have
19 changed them?

20 Q. No, not if you knew the blinds were an
21 issue. If you knew the blinds provided the
22 ability for the people to control the blinds to
23 look at the people on the other side of the
24 window without those people knowing they're being
25 looked at, would you have switched out the blinds

1 to be a different type of blind that wouldn't
2 provide that ability but would still provide the
3 same type of safety that the school wanted to
4 provide?

5 MR. DUKES: Object to the form.

6 A. I guess I wouldn't. As I said before, I
7 don't think those blinds were an issue. So I
8 don't know if they're changing or --

9 Q. That's not the question, sir.

10 I think I've asked it twice now.

11 A. I understand but I -- I guess I -- I
12 don't fully understand what you're asking because
13 you're asking hypothetical. And so --

14 Q. Well, let's ask it differently.

15 A. Okay.

16 Q. Instead of the type of blinds that were
17 used, which allow you to have a -- you have a
18 piece you can turn and they go up and down and
19 you can twist them and you can turn them. If
20 there was a pull-down blind, just a black pull-
21 down blind that would come and cover the whole
22 window. Okay?

23 A. Yeah.

24 Q. Where no -- you couldn't look in and
25 they couldn't see you.

1 A. Right.

2 Q. But you had a blind, you could still
3 hear whatever you could hear; but it took away
4 the ability for people in the coaches' office to
5 look at the children without the children knowing
6 they're being looked at, would you agree with me
7 that would have been a better type of blind to
8 use?

9 MR. DUKES: Object to the form.

10 A. I don't know if it would change kind of
11 the -- those blinds were always closed. You
12 couldn't -- I mean, even with adjusting the
13 blinds, you'd notice that they were turned. So I
14 don't know if it would change.

15 Q. And this brings us back to my earlier
16 statement, and I believe you testified you
17 weren't aware of it; but I will represent to you
18 that at the deposition of LS3P, the architectural
19 firm, they acknowledged that the type of blinds
20 that were installed at the Bishop England locker
21 room were such that you could turn them where you
22 could see the students and the students would not
23 know they're being seen.

24 MR. DUKES: Object to the form.

25 A. I don't know that. I mean, I wasn't in

1 that deposition.

2 Q. I understand you weren't.

3 Understanding that to be the fact, would
4 you agree with me that the choice of blinds that
5 were used was not necessarily the right type of
6 blind?

7 MR. DUKES: Object to the form.

8 A. I didn't make the choice.

9 Q. That wasn't my question, sir.

10 A. I -- I don't know --

11 Q. We can go around this. I'm asking a
12 question --

13 A. I answered the same question for you
14 three times now, is I don't know of any blind
15 that would change that part of it. I mean, the
16 blinds were always closed; and so even the louver
17 blinds you would see someone turn them and would
18 have more light coming through them.

19 Q. How often were you in the locker rooms?

20 A. Very rarely.

21 Q. How often were you in the coaches'
22 office?

23 A. Probably weekly.

24 Q. How often? Once a week?

25 A. Probably once a week.

1 Q. Were you in the girls' locker room as
2 well as the male locker room?

3 A. No, not the locker room. You asked the
4 offices.

5 Q. Offices. Were you in the female
6 coaches' office?

7 A. No. No. Coach Runey's office once a
8 week.

9 Q. So you were in one of the three offices?

10 A. Yes.

11 Q. And based on your interaction once a
12 week in one of the three offices, it's your
13 testimony that all of the blinds were always
14 closed?

15 A. As far as I know.

16 Q. Well, that's different. Okay. Now
17 you're telling me as far as you know.

18 A. Well, every time I had been in his
19 office, they were always closed.

20 Q. You never went into the female coaches'
21 office; correct?

22 A. No. I went into the female coaches'
23 office to talk to the PE teacher.

24 Q. How often?

25 A. I don't know. But rarely.

1 Q. Once a year?

2 A. No. Probably more than that.

3 Q. Five times a year?

4 A. More than that. I would say probably
5 once every month maybe.

6 Q. So based on your going in there once
7 every month, is it your testimony that those
8 blinds -- that you know for sure those blinds
9 were always closed?

10 A. Yes.

11 Q. Would it be a fairer statement, more
12 accurate statement, to say that on the limited
13 times that you were -- that you entered into any
14 of the coaches' offices, you knew the blinds --
15 or you saw the blinds were closed?

16 A. Yes.

17 Q. Would it be fair to say that you cannot
18 testify as to whether or not they were open or
19 closed on the days that you would not have had an
20 opportunity to see them?

21 A. No. 'Cause I was not there.

22 Q. So you would agree with that statement?
23 I believe you said -- I think what you meant to
24 say was yes, but you said no. And I want to make
25 sure we're on the same page. It's not a trick

1 question.

2 A. I was not in his office. So I couldn't
3 tell you if they were open or closed.

4 Q. So your testimony -- just to be sure and
5 we'll move along -- is that on the days or
6 opportunities that you have to enter into the
7 coaches' offices, whichever coaches' office it
8 was, one of the three, that the blinds were
9 always closed?

10 A. Yes.

11 Q. Fair enough.

12 What training did the coaches or other
13 people who entered into or had access to the
14 coaches' offices, what training were they given?

15 A. Everyone who works or is a volunteer at
16 Bishop England goes through state safety
17 training.

18 Q. What is that?

19 A. It's child protection training. So
20 the -- it's how to make sure our children are
21 safe.

22 Q. Why were they given that training?

23 A. That's a Diocese policy. They use Safe
24 Haven in South Carolina. Some Diocese -- the
25 Diocese of Charleston uses Veritas.

1 Q. And tell me about that training. How --
2 is it an hour? Is it online?

3 A. So it is not online. It is in person;
4 and it takes, I think, about an hour, hour-and-a-
5 half. I can't remember. It's been nine years
6 since I've been through it.

7 Q. It's a one-time training?

8 A. Well, there's -- so every five years you
9 have another background check, and now we just
10 went through training again with our staff
11 through a new video and a questionnaire online.

12 Q. Do you keep data as to when each member
13 of staff is trained?

14 A. Yes.

15 Q. And do you keep data as to when and how
16 often you do give background checks, background
17 screening?

18 A. Yes.

19 Q. How often do you do the background
20 screening?

21 A. I would have to look at that. I -- I
22 don't know the answer to that question.

23 Q. Do you know what the training was back
24 in 1998?

25 A. I do not.

1 Q. Do you know what the training was prior
2 to the time that you started working at the
3 school?

4 A. I do not.

5 Q. What's the category of people who would
6 have access to the coaches' office?

7 A. So who's in there or has access to?

8 Q. Who -- what type of -- who has access?
9 Who could go in and out of the coaches' office,
10 either by invitation or at will?

11 A. From -- most part it's coaches --

12 Q. Okay.

13 A. -- that would go in and out of there but
14 it -- it is a -- the office or -- is held by
15 master keys so any master key that would work
16 would go in there.

17 Q. Who has a master key?

18 A. I don't know who all has master key.

19 Q. Do volunteers have access?

20 A. No. They wouldn't have access.

21 Q. Do volunteers ever go into it?

22 A. They probably do, yes. I don't know for
23 a fact.

24 Q. How about janitors? Do janitors have
25 access to it?

1 A. Janitors have access too, yes.

2 Q. Does anybody keep a log as to who goes
3 in or when they go in?

4 A. To the coaches' office?

5 Q. Yes, sir.

6 A. No.

7 Q. Are the coaches' offices locked or not
8 locked in the daytime?

9 A. It's locked if no one's in there. If a
10 coach is in there, then it's open.

11 Q. How do you know that?

12 A. From my experience of going over there.

13 Q. Is that a written rule over there, or is
14 that just your experience?

15 A. That is not a written rule. It is my
16 experience.

17 Q. And is that mostly with Runey's office
18 or with all the offices?

19 A. All the offices.

20 Q. So when you've gone to the offices,
21 someone's in there; or it's locked?

22 A. Yes.

23 Q. But there's no rule that says they must
24 lock the office during the daytime?

25 A. No.

1 Q. Is it true that the coach, depending on
2 what he's doing at any given time, he could be in
3 and out all day long doing different things?

4 A. That's possible, yes.

5 Q. Are there any restrictions in the
6 guidelines about who is allowed to visit the
7 coach in his office or her office?

8 A. Restrictions as far as students or
9 volunteers?

10 Q. Students, volunteers, friends, other
11 teachers, anybody.

12 A. No, there's no restrictions on that.

13 Q. Is there any restriction as to sex --
14 not the act of sex, but the sex of the person
15 that goes into a particular office? For example,
16 can a male coach go into the female coaches'
17 office, or can a female coach or teacher go into
18 the male coaches' office?

19 A. To see a coach or just --

20 Q. For whatever reason.

21 A. Yes, they could.

22 Q. And you understand that anybody who
23 enters into the coaches' office, the male or
24 female coaches' office, any of the three offices
25 would potentially be able to see students on the

1 other side of the window if they were to turn the
2 blinds?

3 A. Yes.

4 Q. I'm assuming the answer is no, but I'm
5 going to ask you. You can just say no if it's
6 no.

7 Were you involved in the decision
8 making, or do you have direct knowledge as to
9 what decision making was placed behind putting
10 those windows into the coaches' offices?

11 A. No.

12 Q. And the same thing with reference to
13 putting blinds.

14 A. No, I wasn't. I wasn't employed at the
15 time.

16 Q. Would you agree that the children on the
17 other side of those blinds -- students at Bishop
18 England High School -- they're entitled to a
19 reasonable expectation of privacy?

20 MR. DUKES: Object to the form.

21 A. I mean, they -- the windows were not
22 hidden. They were visible.

23 Q. That's not the question, sir.

24 A. So I guess can you rephrase the question
25 then?

1 Q. I'm -- I'll have the court reporter read
2 it back.

3 A. Okay.

4 (The pending question was read back by
5 the reporter.)

6 A. Yes.

7 Q. And if they are viewed -- would you
8 agree with me that if those children are viewed
9 by people on the other side of the blinds who are
10 in the coaches' office, that's a violation of
11 their expectation of privacy?

12 MR. DUKES: Object to the form.

13 A. As I mentioned before, the blinds would
14 have to be opened so that the students would then
15 know that there was -- someone was watching and
16 from my experience are always closed.

17 Q. I heard that, but that wasn't my
18 question.

19 MR. SLOTCHIVER: Would you read the
20 question back, please.

21 (The pending question was read back by
22 the reporter.)

23 MR. DUKES: Object to the form.

24 A. I guess it's a yes-or-no answer because
25 in order to view, you have to open the blinds;

1 and the students knew the blinds were there.

2 Q. Mr. Finneran, my question was if they
3 were, in fact, viewed. I'm not asking, you know.
4 You've told me that you only can testify as to
5 what you saw when you were there.

6 My question to you is: If they were, in
7 fact, viewed while in the locker room by people
8 in the coaches' office, whoever those people
9 were, would you agree with me that that would be
10 a violation of their expectation of privacy?

11 MR. DUKES: Object to the form.

12 A. I would guess a no. Because the
13 windows -- they would know the windows are there,
14 and they're there for whatever purpose they were
15 put in for; but the blinds would have to be open
16 so they would know someone was viewing them.

17 Q. Are you refusing to answer my question?

18 A. No. I answered the question.

19 Q. My question is very straight. I'll ask
20 it one more time.

21 A. Answer was no.

22 Q. So if they were viewed by people in the
23 coaches' office, that that did not violate the
24 privacy? That's your testimony?

25 A. Yes.

1 Q. So based on that, there's nothing wrong
2 with viewing people that think they have
3 privacy --

4 A. That's not what I said.

5 Q. Well, you said, I thought, was that if
6 those people were, in fact, viewed, that it would
7 not be a violation of the privacy.

8 A. That's what I said; but I also said that
9 the windows are there, and they knew they were
10 there. So if the blinds were opened to view
11 them, they would know that the windows were
12 there.

13 Q. Well, let's go the next step, make sure
14 we're clear and on the same page.

15 If they were viewed and did not know
16 they were being looked at, they didn't realize
17 the windows were open in a manner that they could
18 be viewed but they were viewed, would that be a
19 violation of their privacy?

20 MR. DUKES: Object to the form.

21 A. Yes. Yes.

22 Q. Are you privy to how many safety issues,
23 safety violations there were in the locker rooms
24 in the year 1998 when it was built?

25 A. I am not.

1 Q. Do you have any knowledge as to the
2 amount of safety violations there were in the
3 locker room prior to the time that you took your
4 job as a principal of Bishop England High School?

5 A. I am not.

6 Q. Was it anything that you ever asked
7 about when you came?

8 A. No.

9 Q. Did you understand that the reason and
10 rationale stated for the installation of the
11 windows and the blinds was for safety?

12 A. That's what I was told, yes.

13 Q. Did you ever check to make sure that
14 there was a basis for it because there was a
15 safety issue?

16 A. Like I said, it was a common thing in a
17 lot of locker rooms.

18 Q. Well, I understand you say it was a
19 common thing; but you've also testified, sir,
20 that the procedures and the protocols and the
21 reasons and what people could do at different
22 schools may have been very different. You don't
23 know; correct?

24 A. No, I don't know.

25 Q. The only thing common was that you saw

1 other high schools with windows, some with
2 blinds, some without blinds?

3 A. Yes.

4 Q. The other factors, you don't know about.

5 A. Right.

6 Q. You don't know if there were -- there
7 was comments or drugs or problems or arrests.
8 You don't know any of those things, correct, as
9 to the other high school?

10 A. No.

11 Q. With Bishop England, there was virtually
12 never an incident that took place in the locker
13 room?

14 A. I don't know in 1998. Since I've been
15 there, there were three incidents that were a
16 concern.

17 Q. What kind type of incidents were they?

18 A. One was a theft of a wallet, and two
19 were videos or pictures taken by fellow students
20 of another student.

21 Q. And how were those incidents realized?
22 Did the coach see that through his office?

23 A. No.

24 Q. Did a member of the staff see it through
25 the coaches' office?

1 A. No.

2 Q. So these were events that were realized
3 that -- that took place, regardless of the fact
4 that you had this viewing window for safety
5 purposes; correct?

6 A. Yes.

7 Q. So the safety purpose of the window was
8 ineffective as it applied to those incidents?

9 A. Yes.

10 Q. Would you agree with me that one of the
11 duties is to continually look at what takes place
12 in the school and what makes sense; correct?

13 A. Yes.

14 Q. And as the principal, your job is to
15 look at what's transpired and to decide if it's a
16 good policy or bad policy; correct?

17 A. Yes.

18 Q. Understanding that, there were no safety
19 incidents that you are aware of for which the
20 windows were effective; correct?

21 MR. DUKES: Object to the form.

22 A. I -- I don't know before I arrived.

23 Q. From the time that you arrived in 2013
24 forward.

25 A. Not -- not to my knowledge, no.

1 Q. So the sole basis for having the windows
2 installed or not installed -- because you weren't
3 involved in the installment, the sole purpose for
4 having windows looking from the coaches' offices
5 into the locker rooms with blinds was
6 ineffective, to your knowledge?

7 MR. DUKES: Object to the form.

8 A. I -- I would say I don't know that
9 because if the students knew the window was
10 there, that that might have stopped some
11 behavior.

12 Q. Because if the students knew the window
13 was there, they would have known the coaches were
14 looking at them?

15 A. No. But they would know that the coach
16 could hear what was happening in the locker room.

17 Q. My understanding is that the distance
18 from the coaches' office into the locker room is
19 a matter of feet; correct?

20 A. From the window to the locker room or
21 from the door to the locker room?

22 Q. From the coaches' office, from his
23 office to get into the locker room.

24 A. Yeah. I don't know how long it would
25 be.

1 Q. Were you a principal at the school when
2 a policy was made setting forth requirements that
3 must be followed before a -- an adult could enter
4 the locker room?

5 A. Can you rephrase that? I mean, I
6 don't -- I don't understand what you're
7 referencing there.

8 Q. I'd be happy to.

9 Were you the principal at the school
10 when a policy was set forth as to what procedures
11 an adult had to follow before he could enter a
12 locker room?

13 A. So we had a procedure where two adults
14 of the same sex need to go into the locker room
15 together.

16 Q. Was that for the safety and privacy of
17 the children?

18 A. That was for the safety of the children
19 and for the safety of the staff.

20 Q. But it was also for the safety of the
21 children?

22 A. Yes.

23 Q. And it was because of their privacy
24 rights?

25 MR. DUKES: Object to the form.

1 A. I don't know what the policy -- why the
2 policy was created.

3 Q. You were principal at the time, weren't
4 you?

5 A. Yes. But that's --

6 Q. What was the safety of the children? I
7 didn't mean to cut you off. Go ahead and finish
8 your answer.

9 A. That was a Diocese policy.

10 Q. Did you just do whatever you were told,
11 or were you involved in that policy?

12 A. I was not involved in the discussion,
13 no.

14 Q. But you said it was also for the safety
15 of the children.

16 A. That is what the discussion was, yes.

17 Q. I'm assuming the -- what else could it
18 be, other than privacy, that would have applied
19 to the children?

20 A. I don't know.

21 Q. So the adult would have to knock on the
22 door, announce himself, and then wait 10 seconds;
23 correct?

24 A. That was not the policy.

25 Q. What was the policy?

1 A. That they would not go in. They would
2 knock on the door and then announce themselves
3 and two to go in.

4 Q. So they have to tell the children
5 they're coming in before they went in?

6 A. Yes.

7 Q. Now -- and then there was -- so there
8 was some time period that was taking place
9 between the time they knock on the door and they
10 enter?

11 A. Not necessarily knock on the door. They
12 would open it and tell them they were coming in.

13 Q. Let me read you something and see if
14 this sounds familiar to you.

15 "Coaches and PE teachers also should
16 exercise due diligence when the players/students
17 are using the locker rooms. As players/students
18 are preparing for class or practice, the teacher/
19 coach -- there's always preferable to have two of
20 the same sex available -- may open the locker
21 room door without entering and announce that the
22 students have blank seconds to finish and exit.
23 The teacher/coach should always be immediately
24 outside the locker room door."

25 A. I do not -- that doesn't -- I mean --

1 Q. That does not sound familiar to you?

2 A. I mean, it does sound familiar; but I
3 don't know where it's from.

4 Q. I'll hand you a copy.

5 A. Okay.

6 Q. This is something we received in
7 discovery. It is labeled Academic Excellence in
8 a Caring Environment Faculty Handbook 2018-2019.

9 Do you recognize this?

10 A. Yes.

11 Q. Were you the principal at the time this
12 was created?

13 A. Yes.

14 Q. Would you please turn to -- we have
15 Bates labels at the bottom. It'll say BEHS.
16 It'll have a number. I'm looking at 000535.

17 A. Okay. (Complies with request.)

18 Q. And if you'll look to the section that
19 starts, as I read, "coaches and PE teachers."

20 A. Yeah.

21 Q. Do you see that section?

22 A. Yes, sir.

23 Q. Let's -- I'll read A. You tell me if I
24 read it correctly.

25 "As players/students are preparing for

1 class or practice, the teacher/coach -- it is
2 always preferable to have at least two of the
3 same sex available -- may open the locker room
4 door without entering and announce that students
5 have blank seconds to finish and exit. The
6 teacher/coach should always be immediately
7 outside the locker room door."

8 Did I read that correctly?

9 A. Yes.

10 Q. Is that the policy --

11 A. Yes.

12 Q. -- that was in the place at the time?

13 A. That's in our handbook, yes.

14 Q. B, "The same would be true after class
15 or practice. Students/players should be given a
16 reasonable amount of time to change out of
17 practice clothes. The teacher/coach should open
18 the locker room door without entering and
19 announce that students have blank seconds to
20 finish and exit. The teacher/coach should always
21 be immediately outside the locker room door in
22 order to be able to listen for any inappropriate
23 behavior."

24 Do you see that? Did I read that
25 correctly?

1 A. Yes, sir.

2 Q. So is the purpose of this to provide the
3 students some privacy but to still allow the
4 teachers to listen in case something wrong is
5 taking place?

6 A. That would appear to be that way, yes.

7 Q. And there is going to be -- based on the
8 rules that are promulgated here, there would be
9 some type of a gap between when they knocked on
10 the door and announced and the time they would
11 enter the door, if they were to enter; correct?

12 A. When they open the door, yes, announce.
13 They would knock, yes, sir.

14 Q. Where's the written policy as to when
15 they would open the windows or the blinds in the
16 locker room to look at the students?

17 A. There is no policy.

18 Q. What is the training? What is the
19 written manual as to the training the teachers or
20 coaches would receive about what they would do
21 before they would open the windows and look at
22 the students?

23 A. There is no written. We come through
24 Safe Haven.

25 Q. I'm sorry?

1 A. It would come through their Safe Haven
2 training.

3 Q. What Safe Haven training would they have
4 with reference to windows in the locker room from
5 the coaches -- excuse me. Windows that they
6 could look into the locker room from the coaches'
7 office?

8 A. I don't recall any of that.

9 Q. Well, you said it would come from the
10 Safe Haven training. If there's no training
11 applicable to it, then there would be no
12 training; correct?

13 A. There would be training, yes. It would
14 be overall training of what the expectations
15 were.

16 Q. If they would hear the noise from
17 outside of the door by knocking and announcing,
18 wouldn't that accomplish the safety concerns that
19 were set forth and the basis for creating the
20 windows to begin with?

21 A. In those scenarios, the coaches or the
22 PE room is outside, yes. The door's open.

23 Q. What's the difference in noise of joking
24 and laughing around and noise of a bully? How
25 does it sound different?

1 A. That's a hard one to answer. You just,
2 kind of, know the difference.

3 Q. How do you know? What training do you
4 have to know?

5 A. It's mostly common sense in a sense of
6 you can tell the difference.

7 Q. Is that you or do you pass that judgment
8 on to everybody that works at the school?

9 A. That would be me.

10 Q. How about your staff that you're in
11 charge of hiring and making sure they're
12 adequately trained? How do they know?

13 A. I don't know. That would be a question
14 for them.

15 Q. But you're the one who hires or
16 maintains them as employees; correct?

17 A. Yes, sir.

18 Q. How were the children protected from
19 them not improperly abusing the windows?

20 A. Can you rephrase that question?

21 Q. How were the children protected from
22 them not improperly -- from them not improperly
23 abusing the windows and looking when they
24 shouldn't be looking at the children?

25 MR. DUKES: Object to the form.

1 A. Can I rephrase what you said so I can
2 make sure I understand what you're trying to say?

3 Q. Absolutely.

4 A. From my understanding what you're trying
5 to tell me is: How can I guarantee that an
6 employee would not open the window blinds and
7 look at students?

8 Q. Correct.

9 A. I can't guarantee that.

10 Q. Only way to guarantee it would be to
11 remove the windows; correct?

12 A. I mean, if it -- the windows were not
13 there, they would not have an opportunity, yes.

14 Q. And if there was a blackout shade as
15 opposed to the type of blinds that were used,
16 that would also preclude them from looking at the
17 kids without the kids knowing they're being
18 looked at; correct?

19 MR. DUKES: Object to the form.

20 A. I don't know that.

21 Q. What type of window treatment are you
22 aware of in your experience?

23 A. Most locker rooms I've seen have the
24 same blinds.

25 Q. Not talking locker rooms. Talking

1 houses, hotels, anywhere you go, what type of
2 window treatment are you aware of as an
3 experience as an adult?

4 MR. DUKES: Object to the form.

5 A. There's a variety of them.

6 Q. Give me some examples.

7 A. You have those louver blinds. You have
8 ones that go vertically as well. You have a
9 shade you pull down.

10 Q. If a shade pulls down, it accomplishes
11 blocking out light; correct?

12 A. Not necessarily. Depends on how it's
13 installed.

14 Q. If a shade pulls down -- and you're
15 talking about just descriptive wise because I
16 know we're on the deposition transcript.

17 A. Sure.

18 Q. You talk about the shade that you grab
19 the top, and you pull it down to the bottom of
20 the window; correct?

21 A. Yes. Yes.

22 Q. And in order to look through that
23 shade -- to look through the window, you've got
24 to lift up the shade; correct?

25 A. Not always necessarily. Depends on

1 how -- where it is installed and how it's
2 installed.

3 Q. Can it be effectively installed so that
4 you can't look without --

5 A. It could be, yes.

6 Q. -- lifting it up?

7 A. Yes.

8 Q. Would you agree with me that the type of
9 windows that were used cannot be effectively
10 installed so that you -- so that you can't look
11 without people on the other side knowing that
12 they're being looked at?

13 MR. DUKES: Object to the form.

14 A. I don't.

15 Q. You don't know?

16 A. I don't.

17 Q. Fair enough.

18 What instructions did you give the
19 coaches or other people who had access to the
20 locker rooms about when it was that they could or
21 couldn't utilize the blinds to look into the
22 locker room?

23 A. I never gave instructions.

24 Q. Did anybody -- are you aware of anybody
25 else that would have given them instructions?

1 A. No.

2 Q. We've been going about an hour-and-a-
3 half. I'm happy to keep going. If you want
4 to take a short break, I'm happy to. It's up to
5 you.

6 A. No. Keep going.

7 Q. Okay.

8 MR. SLOTCHIVER: Let's mark the
9 Academic Excellence in Caring Environment Faculty
10 Handbook as the third exhibit, please.

11 (Exhibit No. 03 was marked for
12 identification.)

13 Q. Mr. Finneran, anywhere in the handbook
14 that it references rules or regulations with
15 reference to the windows that are in the coaches'
16 offices that look into the locker rooms?

17 A. Not that I know of, without reading the
18 whole thing.

19 Q. I believe you stated that you were not
20 involved in the promulgating of the rules set
21 forth in the handbook; is that correct?

22 A. No. I was involved in the promulgating
23 to our staff, on that part of it. The creation
24 of it and the Diocese, I was not.

25 Q. Do you know what the rule was with

1 regard to entering the locker room before 2018?

2 A. I do not.

3 Q. Do you believe that the rule providing
4 privacy to the children by knocking and
5 announcing first is a good rule?

6 A. Yes.

7 Q. Do you believe that it's a rule that's
8 reasonable and makes sense?

9 A. Yes.

10 Q. Do you believe that it's a rule that --
11 that has made sense, not only for 2018, but it
12 would make sense for the last 20 to 30 years?

13 MR. DUKES: Object to the form.

14 A. I'm not -- I would say where we are when
15 it was created, it was a reasonable rule. I
16 don't know beforehand.

17 Q. In your experience as a principal and as
18 a teacher at different schools throughout the
19 country, do you believe that it's a customary
20 rule to announce yourself before you walk into a
21 children's locker room?

22 A. Yes. It's a reasonable rule.

23 Q. And not to do that would be subjecting
24 children to an invasion of privacy?

25 MR. DUKES: Object to the form.

1 A. Not necessarily. If an issue was going
2 on in the locker room, you would not have time to
3 announce yourself.

4 Q. If an urgent issue, which you knew of,
5 was going on in the locker room?

6 A. Yes.

7 Q. What would be an example of that? A
8 gunshot?

9 A. A fight.

10 Q. An obvious fight that you can hear?

11 A. Yeah.

12 Q. And would you agree with me that the
13 historical data of the type of problems that
14 would happen at a school would also have an
15 effect on what rules would be necessary to create
16 safety?

17 MR. DUKES: Object to the form.

18 A. I don't agree with that.

19 Q. You don't agree that a history of safety
20 at a school would deem rules and requirements
21 different than a -- than the history of a school
22 that had daily or weekly violence?

23 A. I disagree.

24 Q. So you believe that you treat all the
25 schools the same, regardless of whether you have

1 incidents in the locker room or no incidents in
2 the locker room?

3 A. I would say that all schools have the
4 opportunity for -- for issues in the locker room,
5 for violence or whatever. No school is immune to
6 that.

7 Q. Knowledge of problems creates urgency;
8 correct?

9 A. Yes.

10 Q. And without urgency -- well, I'll leave
11 it like that.

12 Bishop England, to my understanding, has
13 a rather successful athletic program.

14 A. Yes, sir.

15 Q. It's a very involved athletic program.

16 A. About 75 percent of our students
17 participate in athletics.

18 MR. RICHTER: 75?

19 THE WITNESS: 75.

20 Q. And as I understand it, anybody who
21 would be involved in athletics at the school
22 would have access to or the need to use a locker
23 room at the school, it would be available to
24 them; is that correct?

25 A. Not necessarily anybody who was involved

1 with the school would have access --

2 Q. In sports. Sorry. Maybe I misspoke. I
3 meant people who were involved in the athletic
4 programs who were students who were playing a
5 sport of some sort, they would be the ones who
6 would regularly use the locker rooms.

7 A. Yes.

8 Q. And in addition to those people, it
9 would be anybody who was involved in physical ed?

10 A. Yes.

11 Q. And physical ed would be students who --
12 who were -- would be all students who are
13 required to have a physical ed degree or physical
14 ed class before they graduated Bishop England?

15 A. Yes, sir.

16 Q. So if I was to transfer to Bishop
17 England in my junior year and if I had not had a
18 PE class, would I be required to take PE in my
19 junior year?

20 A. Yes.

21 Q. Same for --

22 A. Junior or senior year.

23 Q. Junior or senior year. Okay.

24 Were teachers instructed per -- what I
25 believe the handbook suggests, that part of their

1 job was to monitor the locker rooms?

2 A. The -- the PE teachers, yes.

3 Q. And was there a log kept as to when they
4 would do it or how often they would do it or the
5 hours they would do it?

6 A. No, sir.

7 Q. Do you know if they did it?

8 A. If they did it?

9 Q. Yes, sir.

10 A. No. I'm not --

11 Q. Was that something that was in place
12 from the time that you came to the school all the
13 way through present?

14 A. Yes.

15 Q. And was it successful?

16 A. I mean --

17 MR. DUKES: Object to the form.

18 Q. You've got three incidents in the time
19 that you've been at the school for eight years;
20 correct?

21 A. Yes.

22 Q. One of them was shoplifting of a wallet,
23 and two of them were videos taken; correct?

24 A. Yes.

25 Q. That's all the incidents you have?

1 A. Yes.

2 Q. Eight years, tons of time in the locker
3 room. That seems like a successful program.
4 Would you agree that's successful?

5 A. I -- I would say no incidents would be
6 successful.

7 Q. It certainly could have been a lot
8 worse; correct?

9 A. Yes.

10 Q. Did you -- is -- is -- we'll come back
11 to it.

12 Is the safety of the school one of the
13 most important jobs that you oversee?

14 MR. DUKES: Object to the form.

15 A. Is the safety of the school?

16 Q. Excuse me. Of the students.

17 MR. DUKES: Object to the form.

18 Q. Is that an important role that you hold?

19 A. It is an important role, yes.

20 Q. And would you agree with me that the
21 children are entitled to a safe environment?

22 MR. DUKES: Object to the form.

23 A. Yes.

24 Q. A moral environment?

25 A. That is the Catholic school way, yes.

1 Morals.

2 Q. And in a nurturing environment?

3 A. Yes, sir.

4 Q. Would you agree with me that if they are
5 viewed without knowing, they're being viewed in
6 the locker room, that that's not a safe
7 environment for them?

8 MR. DUKES: Object to the form.

9 A. I don't know if necessarily it's -- it's
10 the environment if one person does something.

11 Q. I'm not talking one person. If they can
12 be viewed by numerous people without knowing
13 they're being viewed, would you agree with me
14 that that's not a safe environment?

15 MR. DUKES: Object to the form.

16 A. I think our school is a very safe
17 environment, as you mentioned before, about only
18 so many instances in the locker room. So I would
19 say it's a safe environment.

20 Q. With the amount of reported -- that
21 wasn't my question though.

22 My question is: If students in a locker
23 room in various states of dress and undress can
24 be viewed without knowing they're being viewed
25 and they're minors, would you agree with me

1 that's not a safe environment?

2 MR. DUKES: Object to the form.

3 A. I guess I -- I disagree in how you're
4 asking the question in that --

5 Q. I understand you --

6 A. -- you're making a generalization of
7 safety and by one thing so --

8 Q. I am. And I'm asking you, is that a
9 safe environment? I'm not asking you to decide
10 if they are or are not viewed. I'm -- my
11 question is: Assuming they are viewed without
12 knowing they're being viewed while they're in the
13 locker room through windows that are installed by
14 members of the staff of the school, would you
15 agree with me that is not a safe environment?

16 MR. DUKES: Object to the form.

17 A. Without them knowing?

18 Q. Without them knowing, yes, sir.

19 A. It's not a safe environment, no.

20 Q. Would you agree that would not be a
21 moral environment?

22 MR. DUKES: Object to the form.

23 A. Morality's more of an act. So I don't
24 know if the presence of the -- I mean, I said
25 yes, that that would not be moral, right.

1 Q. And it would not be a nurturing
2 environment; correct?

3 MR. DUKES: Object to the form.

4 A. Yes, it would not be.

5 Q. I'm going to take a break in just a
6 moment. I wanted to ask you a couple things;
7 and, hopefully, we'll be able to wrap this up.
8 And I think we -- we've gotten to this.

9 Would you agree with me that a common
10 thing for students at Bishop England is to use
11 and access the locker rooms?

12 A. Of all students or --

13 Q. Students in general.

14 A. If they were in physical education class
15 or they're a student athlete, yes, they would be
16 in the locker room.

17 Q. And 75 percent of the students are
18 involved in athletic activities are then -- so
19 every student, at one point another, if they're
20 at Bishop England will have PE; correct?

21 A. Unless they have that credit from
22 somewhere else, yes.

23 Q. And it would be typical of students to
24 use the locker room to change and to be in
25 various states of dress and undress?

1 A. That is what they do in the locker room,
2 yes.

3 Q. Mr. Finneran, can you hear smoking?

4 A. No.

5 Q. Is it audible?

6 A. Smoking?

7 Q. Yes, sir.

8 A. No. Not that I've been aware of, no.

9 Q. Can you tell me how smoking can be
10 determined by the use of windows with blinds on
11 them in the coaches' office?

12 A. No.

13 Q. It couldn't be, could it?

14 A. No.

15 MR. SLOTCHIVER: Okay. Give me
16 just a moment. Okay. Could we take five
17 minutes, guys? Is that okay?

18 MR. DUKES: Please.

19 (A recess taken 10:25 a.m. to 10:44 a.m.)

20 BY MR. SLOTCHIVER:

21 Q. In my continued, for whatever reason,
22 out-of-order context of questions, let me back
23 you up a little bit.

24 Who lives in South Carolina that you're
25 related to?

1 A. Nobody.

2 Q. Are you married?

3 A. Yes. Well, my wife, yes. I'm sorry. I
4 thought you meant family beyond -- yes, I am
5 married. Yes.

6 Q. Who is your wife?

7 A. Myra, M-Y-R-A, Finneran.

8 Q. Where is she from?

9 A. She is from Huntington, West Virginia.

10 Q. What does she do for a living?

11 A. She is the Director of Curriculum
12 Instruction, Palmetto Christian Academy.

13 Q. And do you have children?

14 A. No.

15 Q. Do you belong to -- Bishop England is
16 probably your largest civic organization.
17 Between that and the church, I'm assuming you
18 belong to the church?

19 A. Yes. I belong to the cathedral.

20 Q. Any other civic organizations that
21 you're involved with?

22 A. I am a lapsed Knight, Knights of
23 Columbus; and I am a lapsed Hibernian, glorified
24 Hibernian.

25 Q. Okay. Fair enough.

1 And where do you live?

2 A. Live at 109 Sandshell Drive, which is
3 off of Clements Ferry.

4 Q. And how old are you?

5 A. I am 49.

6 Q. I had to ask now that it came up.

7 MR. DUKES: Closing in on that AARP
8 card.

9 Q. We talked earlier about privacy of the
10 children. I'd asked you questions about
11 expectations of privacy.

12 A. Yes.

13 Q. Bishop England actually has a privacy
14 policy, doesn't it?

15 A. I'm -- yes.

16 Q. Okay.

17 A. I mean, I don't know what you're
18 referring to. So I'd have to, kind of, see what
19 you're talking about.

20 Q. Is there a written privacy policy, to
21 your knowledge, at Bishop England?

22 A. I don't recall. I don't remember, but I
23 could look at it.

24 Q. Let me show you a document and ask if
25 you've seen this document before.

1 A. (Complies with request.) This is from
2 our -- our --

3 Q. From your website?

4 A. Website, yes.

5 Q. Yes, sir. And under "privacy policy" on
6 the first page, I see it says, "Bishop England
7 High School respects and is committed to
8 protecting your privacy." Is that --

9 A. That is the first line, yes.

10 Q. Is that an accurate statement?

11 A. Yes.

12 Q. And not only is it an accurate statement
13 of what the document reflects; but is that an
14 accurate reflection of what Bishop England
15 promulgates, what they set forth?

16 A. In -- in the context of this policy
17 or --

18 Q. Outside of the policy, just in general,
19 the way that Bishop England acts as a school
20 since you've been employed there --

21 A. So we -- can you rephrase that for me?

22 Q. Sure.

23 Does Bishop England, since you've been
24 at school there, does it, in fact, make an effort
25 or does it -- is it -- does it hold itself out as

1 respecting and being committed to the protection
2 of the privacy of its students and community?

3 MR. DUKES: Object to the form.

4 A. We're committed to the safety of our
5 students, but the policy referenced here is
6 collection of information from technology.

7 Q. So does it not -- even outside of the
8 policy that I've handed you, does it not hold
9 itself out as being -- as extending privacy
10 rights to its students and community?

11 MR. DUKES: Object to the form.

12 A. I -- I guess we don't put ourselves out
13 there as privacy.

14 Q. As the principal of the school, do you
15 believe it's important and a requirement to
16 protect the privacy of its students and
17 community? By "community" I'm talking about
18 parents and alumni.

19 A. I would say safety is the most important
20 thing we do. I mean, privacy is -- is --

21 Q. Is privacy included on that list, or is
22 privacy not as important as safety; or is privacy
23 not even included in it?

24 A. Well, it depends on what you mean by
25 "privacy." I mean, if you're talking about

1 privacy as far as technology, yes. Privacy in
2 the sense of, you know, students doing something
3 wrong in school as far as having something in the
4 bookbag that's illegal or in the locker room
5 that's illegal, then they don't have a right to
6 privacy for that. They bring something illegal
7 on our campus, they don't have a right to
8 privacy.

9 Q. I'm not asking about bringing something
10 illegal on campus. I'm asking more about the
11 fact that students are monitored; correct?

12 A. Yes.

13 Q. And there are certain things intrinsic
14 in our world that are private, whatever they may
15 be. It may be your state of dress or undress.
16 That's a private issue; correct?

17 MR. DUKES: Object to the form.

18 A. Yeah. Unless the parents put it out on
19 their -- for the other parents to see.

20 Q. But the school itself doesn't take the
21 position that they're going to invade the privacy
22 rights of children.

23 MR. DUKES: Object to the form.

24 A. Like I said, safety is more important on
25 that part of it.

1 Q. Well, let's talk, then, about the
2 mission. Does Bishop England have a mission?

3 A. Yes.

4 Q. Let me show you a document that I
5 believe adequately -- or we've -- not
6 adequately -- reflects the mission of Bishop
7 England. And this is out of a publication called
8 "Bishop England News" on the front page. I'm
9 sorry. I turned it to the second page where it
10 referenced mission.

11 A. This is our website.

12 Q. Yes, sir. And you oversee this?

13 A. I -- we have someone who does it. I
14 oversee her, yes.

15 Q. So in the world of the buck stops here,
16 it goes up to you. You're the principal of the
17 school?

18 A. Yes, sir.

19 Q. And the mission I'm reading on page 2 of
20 this document -- and I'm reading toward the third
21 line -- "Establishing the best possible
22 environment for learning, the climate of safety,
23 trust, respect for the individual, and an
24 appreciation for the acquisition of learning."

25 Is that a fair statement?

1 A. That is the mission -- this mission
2 statement says. Our mission statement has
3 changed. It has not been changed on our website.

4 Q. So is the mission statement no longer to
5 provide a -- the best possible environment for
6 learning?

7 A. I do not recall what the new mission
8 statement says.

9 Q. I'm not asking in particular. I'm
10 asking you: Is the mission of Bishop England no
11 longer to provide the best possible environment
12 for learning, to your knowledge as the principal?

13 A. That is one of our missions, yes. But I
14 don't know if it's in our mission statement.

15 Q. I know the mission statement is going to
16 be maybe different and may have added some more
17 things; but I'm asking you, is it still your
18 understanding as the principal that certainly at
19 the time since you became employed -- when did
20 the mission statement change, by the way?

21 A. Last year. School year.

22 Q. From the time you became employed until
23 the last year's school year, would you agree that
24 the mission statement was, in fact, to provide
25 the best possible environment for learning?

1 A. Yes.

2 Q. And in a climate of safety?

3 A. That's what it says, yes.

4 Q. Not asking what it says. I'm asking,
5 also is that a true statement? Is that accurate?

6 A. Yes.

7 Q. And an environment of trust?

8 A. Yes.

9 Q. And respect?

10 A. Yes.

11 Q. Respect for the individual as an
12 appreciation for the acquisition of -- and an
13 appreciation for the acquisition of learning?

14 A. Yes.

15 Q. So regardless of what it says, it is, in
16 fact, what the mission is; correct?

17 A. It's intrinsic to what we do as a
18 school, yes.

19 MR. SLOTCHIVER: Let's mark this as
20 an exhibit.

21 THE WITNESS: This one?

22 MR. SLOTCHIVER: Yes. We can mark
23 both of them, the privacy document and the --
24 let's mark this one first, the privacy document.
25 (Indicating.)

1 (Exhibit No. 04 and Exhibit No. 05 were
2 marked for identification.)

3 Q. And if I were to call up Bishop England
4 and ask for a copy of -- or a list of all the
5 students' names, would you provide it to me?

6 A. No.

7 Q. Why is that?

8 A. Because we wouldn't know the intent of
9 what you're trying to do.

10 Q. Is it a privacy issue?

11 A. There is privacy to that, yes, if the
12 parents don't want that information out.

13 Q. So would it be the school's position
14 that they need to protect the privacy of the
15 parents and the students?

16 A. Yes. Unless they give us permission to
17 post that.

18 Q. So the parents are part of the community
19 as well as the students being part of the
20 community of the school?

21 A. Yes.

22 Q. A couple of cleanup questions.

23 You had mentioned training that's given.
24 I believe you -- you said you had the training
25 nine years ago?

1 A. When I first arrived. So it would have
2 been nine years, yes. And then we had training
3 again this past year. Another video we had to
4 watch.

5 Q. So --

6 A. And answer questions.

7 Q. -- in nine years you've had training
8 twice?

9 A. No. We've had other safe environment
10 trainings or discussions.

11 Q. Do volunteers get training?

12 A. Yes. They have to go to the safe
13 environment.

14 Q. Do you keep records of the training
15 that's provided to the volunteers?

16 A. Yes.

17 Q. So if I was to give you the name of a
18 particular volunteer who was at the school, you'd
19 be able to confirm through your counsel what
20 training records you have on that person?

21 A. Yes.

22 Q. And it would tell me the type of
23 training and the dates that the training was
24 given?

25 A. Our training is the Safe Haven training.

1 It would give you the date, yes.

2 Q. Is there a pass/fail?

3 A. No.

4 Q. Is it a live instructor?

5 A. When I did it, it was a live instructor.

6 I don't know if it's that way anymore.

7 Q. What would the alternative be if it's

8 not a live instructor?

9 A. Videos that we would watch. It would
10 come from --

11 Q. How many people are in the training at
12 the time?

13 A. When I went through it, there were eight
14 of us.

15 Q. So the training is something that's --
16 that the person must sit and listen to. The
17 effectiveness of it, we don't know; correct?

18 A. I wouldn't know, no.

19 Q. A test would show you if it was
20 effective; correct?

21 A. They have to answer questions. They
22 would have to have those correct, yes.

23 Q. You work in a teaching environment;
24 correct?

25 A. Yes. Yes.

1 Q. And does Bishop England, as a regular
2 course with its students, require them to take
3 tests to confirm that, not only did they sit in
4 the classroom, but that they actually learned
5 something from it?

6 A. Yes.

7 Q. And you want to make sure that the
8 knowledge that was imparted was actually received
9 by them?

10 A. Yes.

11 Q. Because if it wasn't, they would just,
12 you know. Then their being there didn't --
13 didn't matter from the purposes of learning. It
14 just meant they were physically there.

15 MR. DUKES: Object to the form.

16 A. I would disagree with that part of it.

17 Q. You're aware --

18 A. So -- let me finish my answer here.

19 Q. Sure.

20 A. Because not all students test well. So
21 testing physical, pen and paper test, is not
22 always an accurate example of understanding.

23 Q. What does Bishop England do when a
24 student doesn't test well with a pen and paper?
25 Do you ever have the teacher talk with them

1 separately?

2 A. We do give accommodations to students.

3 Q. Do you ever give an oral exam to a
4 student?

5 A. I can't tell you whether we have or not.
6 I don't know.

7 Q. Does Bishop England strive to make sure
8 that the student learns the material even in
9 scenarios where the student is not a great pen
10 and paper test taker?

11 A. Yes.

12 Q. What verification was done with
13 reference to the teachers or the volunteers or
14 the coaches or the staff members at Bishop
15 England to make sure that they actually learn
16 something from the Safe Haven?

17 MR. DUKES: Object to the form.

18 A. I don't -- I'm not in charge of that
19 program so I couldn't give you that answer.

20 Q. Do you know?

21 A. For -- for me it was a discussion and
22 answering of questions.

23 Q. So you paid attention. You listened to
24 what they had to say, and you tried to learn from
25 it?

1 A. Always.

2 Q. Whether or not that's true for other
3 people, you can't attest to that?

4 A. I cannot.

5 Q. And there's no test to validate whether
6 or not they did or didn't learn from it? You
7 just know that they went to the class?

8 A. From my remembrance, there is actually
9 something they have to take -- not necessarily a
10 test but kind of understanding of what they've
11 learned, yes.

12 Q. Will that be documented in whatever
13 materials the school gets?

14 A. No.

15 Q. Has anybody ever failed the Safe Haven
16 test, to your knowledge?

17 A. Not to my knowledge, no.

18 Q. Is it possible to fail the Safe Haven
19 test?

20 A. I don't know.

21 Q. Or is it just something you must say, "I
22 went to it and I -- therefore, I pass"?

23 A. No. The expectation is that they pay
24 attention.

25 Q. That's the expectation of the school?

1 A. Yes.

2 Q. But it's not verified --

3 A. And the -- and the Diocese.

4 Q. But it's not verified in any way?

5 A. It's verified by their attendance. I
6 don't know how else they verify it.

7 Q. The -- so the only thing that you're
8 sure of is that they attended?

9 A. Yes.

10 Q. That's the only thing you could be sure
11 of with reference to the impart of knowledge that
12 they were provided?

13 A. Yes.

14 Q. You testified, I believe, there were
15 three incidents that you're aware of that have
16 occurred in the locker room during your tenure at
17 Bishop England?

18 A. There's actually four, but the three I
19 mentioned earlier and then Mr. Scofield's issue.

20 Q. Fair enough. We'll come to that in a
21 moment.

22 What were the dates of the other
23 incidents? Not Mr. Scofield. We all know that
24 date. What about the other ones?

25 A. I don't know. I don't have them.

Deposition of Patrick Finneran

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1 Q. Do you have calendar years?

2 A. I don't.

3 Q. Were they documented anywhere?

4 A. They were, yes.

5 Q. Where would they be documented?

6 A. At the disciplinarian.

7 Q. Who's the disciplinarian?

8 A. At that time I believe it was

9 Miss Tucker.

10 Q. Who's the disciplinarian now?

11 A. Miss Rosebrock.

12 Q. If you wanted to access to verify these
13 three incidents and when they took place, where
14 would you go?

15 A. Mrs. Tucker.

16 Q. Where would she go?

17 A. She would have that information.

18 Q. So if we were to ask Miss Tucker in her
19 deposition the dates of these incidents, she
20 would know them or have access to them?

21 A. I don't know if she would know them, but
22 she would have access to the notes from that
23 time.

24 Q. They haven't been destroyed; correct?

25 A. No.

1 Q. Assuming that she doesn't have it on her
2 at the time of her deposition, how long would it
3 take for her to access it?

4 A. I don't know.

5 Q. Probably a matter of minutes when she's
6 in her office?

7 A. I think that information's already been
8 provided to Mr. Dukes.

9 Q. I'm not aware of the dates.

10 A. Okay.

11 Q. I'm only aware of the fact there were
12 three incidents. We've asked for the dates.
13 That's why I'm asking you.

14 A. I don't know if -- she would have the
15 dates in her notes. So I don't know if she would
16 have the dates. It would take her -- I don't
17 know how long it would take her to get that
18 information.

19 Q. Probably moments?

20 A. I would say within a day or so,
21 depending on what's going on.

22 Q. Fair enough.

23 Were the students notified that there
24 were windows in the locker room from which they
25 could be viewed?

1 A. Not to my knowledge, no.

2 Q. Were the parents notified that there
3 were windows in the locker rooms from which they
4 could be viewed?

5 A. Not to my knowledge.

6 Q. So the first time that it became public,
7 then, would have been -- and it became
8 ascertainable would have been after Scofield was
9 arrested?

10 MR. DUKES: Object to the form.

11 A. I don't know that. I don't -- as the
12 answer, I don't know if they knew or not.

13 Q. To your knowledge, the first time that
14 you had ever heard of a complaint or a comment or
15 a concern -- we talked about complaints and
16 comments and concerns. Do you remember that
17 earlier today?

18 A. Yes.

19 Q. The first time you had ever heard of a
20 complaint or a comment or a concern would have
21 been after Scofield's arrest; correct?

22 A. That is the first time I had heard it.

23 Q. Were there any signs or warnings or
24 postings in the locker rooms advising students
25 that they could be monitored in the locker rooms?

1 A. Not that I recall.

2 Q. Were there any letters or communications
3 or announcements provided to the parents or
4 students giving them notice that the students
5 could be monitored in the locker rooms?

6 A. Not that I remember, no.

7 Q. Anything preventing the school from
8 putting a warning or a notice or sending
9 communication to the parents saying, "Hey, one of
10 the things you need to know of is that if there's
11 an incident in the locker room that we hear or
12 that gives us some concern, we reserve the right
13 and we may enter the locker room or look through
14 a window in the locker room and see your
15 children; and they may or may not be dressed"?

16 A. So your question is anything preventing
17 us from saying that?

18 Q. In saying that or having done that.

19 MR. DUKES: Object to the form.

20 A. No. There's nothing to prevent us from
21 informing the parents that there are windows.

22 Q. Do you believe that the students are
23 safe now in the locker rooms?

24 A. I mean, I -- they were safe before. So
25 I don't know if that safety's changed.

1 Q. You took the windows out; right?

2 A. We did out of concerns from parents.

3 Q. If it wasn't for the parents, you would
4 still have the windows in the locker room right
5 now?

6 A. If there wasn't concerns about it, yeah.

7 Q. That wasn't my question. If it wasn't
8 for did the -- I'll say it differently.

9 If it wasn't for the parents expressing
10 their concerns and complaints, would you still
11 have the windows in the locker room now?

12 A. Yes.

13 Q. Despite the fact that Scofield utilized
14 those windows without anybody knowing and filmed
15 people in various states of dress and undress?

16 A. We would probably have kept them boarded
17 up or changed --

18 Q. Or maybe changed the type of blinds that
19 were available?

20 A. Maybe.

21 MR. DUKES: Object to the form.

22 A. I don't know.

23 Q. I'm going to read to you some testimony
24 that was provided to us in deposition from LS3P.

25 A. Okay.

1 Q. And ask if you have any knowledge of
2 this.

3 A. Okay.

4 Q. I'm doing it for two purposes. No. 1,
5 to ask you questions. No. 2, so that you know
6 that when I asked you the question, I wasn't
7 making it up.

8 MR. DUKES: Dan, for my ease, can
9 you tell me the page?

10 MR. SLOTCHIVER: I will. I will.
11 Give me one second, make sure I -- page 154.

12 MR. DUKES: Thank you.

13 MR. SLOTCHIVER: And 155.

14 MR. DUKES: Section 2?

15 MS. RICHTER: You have copies.

16 MR. SLOTCHIVER: I'm going to hand
17 you a copy to make it easier. Thank you, Anna.

18 MS. RICHTER: Uh-huh.

19 Q. To the extent that the context may not
20 be obvious, I'm going to read with you and ask
21 you questions on page 154 and 155. Okay?

22 A. Yes, sir.

23 Q. And starting on line 7.

24 "And they could be used?

25 couldn't they, to lure a student

1 into thinking nobody can see me.

2 The blinds are closed."

3 Then I'm moving to line 12. I'm
4 going to skip the objections.

5 "They could have that effect,
6 couldn't they?"

7 "Could, yes, sir."

8 Is the response. Do you see that?

9 A. Yes, I see it.

10 Q. "And do you agree with me that
11 there is a place in the opening
12 or closure of blinds where it
13 looks like from the inside that
14 say -- or from this -- the other side
15 of the blind. I don't know how
16 you describe one side versus the
17 other; but from the dressing room
18 side of the blind where it can
19 look like it's a solid bar to
20 view, but, in fact, you can see
21 out."

22 Do you see that?

23 A. Yes, I see that.

24 Q. "These blinds in this room, if
25 you'd like to look at these,

1 you'll see they're all three the
2 blinds -- the three blinds are all
3 at three different levels of
4 closure, which changes the look
5 from the other side of the blind,
6 doesn't it?"

7 "Yes, sir."

8 Now we're on page 155.

9 "And do you understand that a
10 student can be mislead to think
11 that I am safe from uninvited
12 viewing, that my privacy is not
13 going to be invaded 'cause it
14 looks like the blinds are closed;
15 and my nudity is going to be
16 exposed to persons who want to
17 look at me."

18 Do you understand that?

19 MR. RICHTER: You left the word
20 "not" out.

21 Q. I'm sorry?

22 A. Line 119. You left "not" out.

23 Q. "And my nudity is not going to be
24 exposed to persons who want to
25 look at me."

1 "It's possible, yes, sir."

2 So do you see, this is from the
3 LS3P. Do you know who LS3P is?

4 A. Yes.

5 Q. Do you understand that they're the
6 architectural firm that built the building?

7 A. They're the ones that designed the
8 building, yes.

9 Q. And their testimony is that these --
10 these types of blinds that were used are such
11 that the students can, in fact, think they're not
12 being looked at when the person on the other side
13 can be looking at them?

14 MR. DUKES: Object to the form.

15 Q. Do you understand that testimony that's
16 been provided?

17 A. I -- I understand what's on this paper,
18 yes.

19 Q. Does this help you understand the
20 concern about the fact that the blinds do -- that
21 the types of blinds used here, you know, can
22 create a safe haven, to an extent, to the
23 students where they think that they're safe; but
24 they're really not safe from being viewed?

25 MR. DUKES: Object to the form.

1 A. I don't see where you said a type of
2 blind.

3 Q. Well, he's referring to the blinds that
4 were used. He doesn't say the type. He's
5 referring to the blinds that are used.

6 A. Okay.

7 Q. And the blinds that are used are the
8 ones we've been talking about today; correct?

9 A. Yes, sir.

10 Q. Which now makes -- maybe gives you
11 more -- makes more sense to you when I was asking
12 you about the fact that there were other types of
13 blinds that would not afford the ability to
14 believe that you're not being looked at and still
15 being looked at.

16 MR. DUKES: Object to the form.

17 A. I -- I can't tell you if either type of
18 blind would provide the same thing. I don't
19 know.

20 Q. If you had known that these blinds that
21 were being used at the school when you arrived
22 there afforded a person in the coaches' office to
23 look at the students without the students knowing
24 they're being looked at, would you, in fact, have
25 changed the blinds?

1 MR. DUKES: Object to the form.

2 Q. Or boarded up the window completely?

3 A. I don't know. I mean, I -- I don't know
4 the answer to that question.

5 Q. Why?

6 A. Because there was never an issue until
7 Mr. Scofield did what he did.

8 Q. There was never an issue you knew about;
9 correct?

10 A. Never an issue brought to my attention.

11 Q. But the fact that it wasn't brought to
12 your attention doesn't mean that it didn't take
13 place; correct?

14 MR. DUKES: Object to the form.

15 A. Yes. That's true.

16 Q. And understanding that these types of
17 blinds, based on the testimony of the architect,
18 created an ability to view students without the
19 students knowing they're being viewed, would you
20 agree with me that's not a safe mechanism to have
21 in the school?

22 MR. DUKES: Object to the form.

23 A. Again, it's -- he's not talking about
24 the type of blind generally. He's talking
25 about --

1 Q. The blinds.

2 A. -- the space.

3 Q. He's talking about the blinds that were
4 used. He's not talking about the windows.

5 A. I understand that.

6 Q. He's talking about the types of blinds
7 that were used here, the blinds that were used in
8 this case.

9 A. Yes.

10 Q. So if there were other blinds that
11 could -- that would not afford the ability, that
12 would be a safer type of blind to put in for the
13 effect of the children; correct? Or for the
14 safety of the children?

15 MR. DUKES: Object to the form.

16 A. And if there were some other way to --
17 yes. I guess the answer is yes. But it's also
18 in that testimony, it doesn't necessarily -- it
19 more talks about where the student from the
20 inside doesn't realize he's looking. So any
21 different type of blind could have done the same
22 thing. I don't know. I don't know the answer to
23 that question because those were the blinds that
24 were in there.

25 Q. If it was a wooden shutter that blocked

1 out the entire window, it would not necessarily
2 do the same type of thing; correct?

3 A. When we had the plywood up there, you
4 would not see it.

5 Q. And we talked earlier about the fact
6 there could be a pull-down blind. Your testimony
7 was it could be installed in a way where it would
8 block you from looking to the other side without
9 lifting up the blinds.

10 Do you remember that testimony earlier?

11 A. Yes. Yes.

12 Q. So there were other blinds that could
13 have been utilized that would have been safer for
14 the children?

15 MR. DUKES: Object to the form.

16 A. Possibly, yes.

17 Q. Not your area of expertise?

18 A. Not my area of expertise.

19 Q. Nothing that you were aware of at the
20 time?

21 A. No.

22 Q. Have you been involved in any meetings
23 with any representatives from LS3P?

24 A. No. We had a former parent who was a
25 member of LS3P but never official meetings.

1 Q. Have you been involved in any meetings
2 with anybody, outside of your counsel, about the
3 windows?

4 A. No.

5 Q. How about Gulf Stream?

6 A. I'm sorry?

7 Q. How about Gulf Stream? Do you know who
8 Gulf Stream is?

9 A. Yes.

10 Q. Have you had any meetings with anybody
11 from Gulf Stream about these windows?

12 A. No.

13 Q. Any conversations with anybody from Gulf
14 Stream about these windows?

15 A. No.

16 Q. In their individual capacity or in their
17 business capacity?

18 A. Yes. I haven't had any conversation.

19 Q. The same thing with LS3P.

20 A. Same thing with LS3P.

21 Q. When you notified the parents of the
22 problem with their children, the parents of the
23 Scofield victims, was that notification in
24 writing?

25 A. No. It was a phone call.

1 Q. You mentioned you did talk to a parent
2 from LS3P. Who was that?

3 A. I cannot remember. I don't remember the
4 parent. He just told me that's -- that's what he
5 did. I don't remember his name.

6 MR. SLOTCHIVER: Can we -- I know
7 it's part of the transcript; but just for clarity
8 can we admit this as an exhibit, please.

9 (Exhibit No. 06 was marked for
10 identification.)

11 MR. SLOTCHIVER: Let's take a quick
12 break, and we're about done.

13 (A recess was taken 11:14 a.m. to 11:24 a.m.)

14 BY MR. SLOTCHIVER:

15 Q. Mr. Finneran, thank you. We're about
16 done. Probably three minutes.

17 Where could I go to see the window and
18 blinds that were taken out of the school?

19 A. I don't know.

20 Q. Where would they have been -- were
21 they -- are they preserved in a storage facility
22 somewhere?

23 A. I don't think so.

24 Q. Well, was the evidence not saved?

25 MR. DUKES: Object to the form.

1 A. We saved the evidence that we had, yes.

2 Q. So you would have -- I mean, knowing
3 that the window was part of the issue and having
4 received the spoliation letter, I'm assuming
5 somewhere you would have saved the windows and
6 the blinds; correct?

7 A. Not that I know of, no.

8 Q. Who made the decision not to save the
9 windows and the blinds that were in the coaches'
10 office looking into the locker rooms?

11 A. The decision was to -- after boarding
12 them up after it happened was to brick them in.

13 Q. I understand.

14 Who made the decision? In light of the
15 spoliation letter, who made the decision not to
16 save them?

17 A. There was no discussion about that. So
18 the decision was to block them in.

19 Q. I mean, we can, to some extent, you
20 know, look and understand some things; but we
21 don't have -- for example, do you have -- there's
22 nowhere that it's been saved?

23 A. Not that I know of, no.

24 Q. How -- what was the timeliness in
25 conjunction with the removing of the windows and

1 closing it up? Not the boarding it up but the
2 closing them up.

3 When you actually took the windows and
4 the blinds out, what was the time between that
5 and when they would have been discarded?

6 A. I don't know. I mean, I don't know when
7 they were discarded.

8 Q. Do you know if --

9 A. I don't know that either.

10 Q. Do you know who would know the answer to
11 whether or not they were discarded?

12 A. I don't know. We had a company come in
13 and replace the windows with block.

14 Q. The company that came to replace the
15 window with blocks, that was a friend; correct?
16 Friend of the school?

17 A. Well, he's a contractor, does work; but
18 his kids go to the school, yes.

19 Q. Did he charge the school any money?

20 A. He actually did, yes.

21 Q. Do you have a copy of that paperwork
22 anywhere?

23 A. I do not have it, no.

24 Q. Who would have it?

25 A. It would be with our bookkeeper.

1 Q. So if we request it, you would have
2 saved that document?

3 A. Yes.

4 Q. Is it possible that the contractor --
5 who was the contractor, by the way?

6 A. It's -- Mr. Dennis is -- is the
7 gentleman. I cannot remember the name of his
8 company.

9 Q. Is it possible that the company would
10 have preserved the windows and the blinds?

11 A. I don't know.

12 Q. Would you agree with me that the amount
13 of space taken to preserve the 4 x 4 windows and
14 the blinds would have been minimal?

15 MR. DUKES: Object to the form.

16 A. I don't know what space requirements
17 that you have as far as any warehouse for that
18 kind of stuff.

19 Q. It's a 4 foot x 4 foot window; correct?

20 A. I understand the size, yes.

21 Q. There's three of them; correct?

22 A. There were three of them, yes.

23 Q. They purportedly could stack on top of
24 each other?

25 A. You could, yes.

1 Q. And then you had blinds in the windows
2 that are already in the windows; correct?

3 A. I cannot remember where the blinds were
4 hung. If they were inside, on the windows
5 themselves, or just inside the sill part of it.

6 Q. Were they the same blinds from the time
7 you came to the school until the time the windows
8 came out?

9 A. They haven't changed, no. They were
10 still there.

11 Q. Just to be clear, you don't know if the
12 windows or the glass was preserved. But you can
13 try to find out; correct?

14 A. I could ask, yes.

15 Q. Would it have been -- in light of this
16 spoliation letter, would it have been the
17 instruction -- who would have had -- I'll ask it
18 differently because I'm jumping around.

19 Who made the decision to pull the
20 windows out? Was that you, or was that the
21 Diocese?

22 A. The request to take the windows out
23 would have been mine.

24 Q. And who made the arrangements to pull
25 the windows out?

1 A. So our Director of Operations, Mike
2 Darnell, spoke with Mr. Dennis about arranging
3 that part of it.

4 Q. When you receive -- well, let's go back
5 to the spoliation letter.

6 When you receive communications such as
7 this one, do you file it; or do you share it with
8 other people?

9 A. So you --

10 Q. Let's pull the exhibit. I think it's
11 Exhibit No. 01.

12 A. It's Exhibit No. 02.

13 Q. I think it was copied to somebody else
14 also.

15 A. It was copied to the Bishop.

16 Q. So when you received it, did you
17 communicate with anybody about this?

18 A. Yes.

19 Q. Who would you have spoken to?

20 A. I spoke to Miss Tucker, who's the
21 associate principal.

22 Q. And what did you and she talk about?

23 A. To save all the emails, documents, that
24 kind of stuff.

25 Q. Did you -- I'm not asking what you spoke

1 to a lawyer about, but did you consult with a
2 lawyer about this letter?

3 A. We would have had discussion about it,
4 yes.

5 Q. When you say "we," you mean you and
6 Miss Tucker; or you and a lawyer would have had
7 discussions?

8 A. Mr. Dukes and I would have had
9 discussions.

10 Q. You certainly got the letter. You
11 talked to Miss Tucker about the letter; correct?

12 A. What -- I don't remember getting the
13 letter; but if I could have, if I did get the
14 letter, I'm assuming we did because it's
15 addressed to me. Then, yes, I would have talked
16 to Miss Tucker.

17 Q. So we may be able to ask Miss Tucker
18 about the conversations. Maybe she'll know.

19 A. She might remember, yes.

20 Q. Did you understand that the letter
21 wasn't written that would -- I'll say it
22 differently.

23 You understand the letter was written to
24 you, not Miss Tucker; correct?

25 A. Yes.

1 Q. And it was written to you and not to
2 Mr. Dukes, your lawyer; correct?

3 A. Yes.

4 Q. And the duty has been set forth on you
5 as the principal; correct?

6 A. I understand that, yes.

7 Q. Did you make any efforts to protect the
8 window? It sounds like you may have because you
9 said you don't know where it is, but did you make
10 any effort to protect the window or the blinds
11 and to preserve them?

12 A. No, not that I -- no. I don't know what
13 they did with the windows when they took them
14 out.

15 Q. Do you understand that without that
16 evidence, that can affect our investigation
17 'cause we don't have the actual windows or the
18 actual blinds to look at? You understand why
19 it's important?

20 MR. DUKES: Object to the form.

21 A. That -- but you already came and took
22 pictures of all those things. You had the -- you
23 looked at all those when they were still in
24 there.

25 Q. So did you believe that by the fact that

1 we went there, that eradicated this letter?

2 A. No.

3 Q. You understand without looking --
4 without being able to look at it and to see it
5 and to bring an expert to actually look at it, we
6 don't have the opportunity to have a full
7 investigation as much as we might have liked to
8 have had?

9 MR. DUKES: Object to the form.

10 A. I don't know the answer to that
11 question. I don't do those things.

12 Q. Not what you do. Okay.

13 Were the windows single glass, double
14 glass, compressed glass?

15 A. I don't know. I -- truthfully, I don't
16 remember.

17 Q. I mean, those are things that wouldn't
18 necessarily show up on a photograph; correct?

19 A. They may. I don't know.

20 Q. Those are things that if we had an
21 opportunity to look at it, we could tell;
22 correct?

23 MR. DUKES: Object to the form.

24 A. I guess so, yes. I don't know.

25 Q. And the same thing with the blinds. You

1 know, how -- were the blinds relatively new?
2 Were they old? Were they beat up? Did they
3 work?

4 A. They worked, yes.

5 Q. How do you know they worked? Did you
6 ever use the blinds?

7 A. I never used them, but they were closed.
8 So they had to work.

9 Q. Well, they were closed. And I believe
10 your testimony was whenever you were in the
11 office, they were closed; correct?

12 A. Yes.

13 Q. Were they closed, or did they appear to
14 be closed?

15 MR. DUKES: Object to the form.

16 Q. Could you distinguish those two things?

17 A. Yes. They were closed.

18 Q. When you were in the locker room, were
19 they closed; or did they appear to be closed?

20 A. I don't ever remember looking at them
21 from the locker room.

22 Q. Fair enough.

23 Was it -- are you the one that was --
24 that collected faculty handbooks for us?

25 A. With the assistance of Miss Tucker, yes,

1 sir.

2 Q. When was that that you started getting
3 together the faculty handbooks?

4 A. I don't remember.

5 Q. Was it in the last week? Or last month?
6 Last couple of months?

7 A. Last couple months.

8 Q. Would you have provided those handbooks
9 to your counsel more than a week ago?

10 A. I would think it might have been a week
11 ago. I don't know.

12 Q. Could it have been a month ago?

13 MR. DUKES: Object to the form.

14 A. I don't recall when it was given to him.

15 Q. Is it at least more than 72 hours ago?

16 A. Yes. It was more than 72 hours ago,
17 yes.

18 Q. I'll represent to you that some of the
19 handbooks that were referenced in the
20 communications were not included in the
21 communications. Okay. Or in the production.

22 For example, we received a letter
23 attaching to us the faculty handbooks from
24 2011-12 through 2021-22. Is that what you
25 provided?

1 A. I don't know. I can't remember what
2 all -- how many handbooks were there.

3 Q. Well, we weren't -- when we reviewed it,
4 we were missing 2013-14, 2015-16, 2016-17; and
5 we're also missing 65 pages of some Bates numbers
6 and 54 pages of other Bates numbers with regard
7 to different versions of the 2021-22 handbook.

8 But these things you could readily and
9 promptly get your hands on with the assistance of
10 somebody else and provide to us?

11 A. I would have to see what was provided
12 already to Mr. Dukes.

13 Q. Are there multiple handbooks for some
14 calendar years?

15 A. No.

16 Q. So if we received --

17 A. Let me verify that.

18 There is a faculty handbook, and then
19 there's a parent-student handbook. So I guess,
20 yes, there are multiple handbooks.

21 Q. So if we received a faculty handbook
22 that references 65 pages and a different faculty
23 handbook for the same calendar that referenced 54
24 pages, that's not correct?

25 A. I would have to see. I don't know what

1 would not have been in there, if there would have
2 been an error in the document itself.

3 Q. Is this something you could -- that you
4 could look into when you get back in the office?
5 We can send a note to your lawyer and ask him,
6 and something you could turn around pretty
7 quickly?

8 A. It would take some time, yes.

9 Q. Well, if he wasn't provided it, you
10 could find it 'cause you keep track of all those
11 things; correct?

12 A. I do not, no.

13 Q. School maintains them, no?

14 A. Not necessarily, no.

15 Q. School does not maintain old copies of
16 handbooks?

17 A. No.

18 Q. Does the school -- how far back does the
19 school go with maintaining --

20 A. School was started in 1950.

21 Q. But, I mean, if you've got calendar
22 years before 2013-14, is it just random the years
23 you happen to keep or the years that you don't
24 keep?

25 A. There is no central place we keep those.

1 Q. So what effort would have to be made in
2 order to obtain copies of them?

3 A. We'd have to do some work and find out
4 where they are, if there are any copies
5 available.

6 Q. So it could be that the ones that
7 weren't provided, you just don't have copies of
8 them?

9 A. That's possible.

10 Q. Is there a record keeper at Bishop
11 England who's charged with the responsibility of
12 keeping records?

13 A. We have a Registrar For Student Records,
14 yes.

15 Q. Does that include disciplinary records?

16 A. No.

17 Q. Where are they -- where are they
18 maintained?

19 A. Disciplinary records are destroyed after
20 the student graduates.

21 Q. How soon after?

22 A. Within a year.

23 Q. Did you as the principal have an
24 opportunity to view the responses to the
25 interrogatories prior to them being sent to us?

Deposition of Patrick Finneran

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1 A. Yes.

2 Q. And I show you a copy and ask if you've
3 reviewed -- this is a copy of what you reviewed?

4 A. (Complies with request.) They appear to
5 be, yes.

6 Q. And did you sign off on them as to the
7 accuracy of them before they were submitted to
8 us?

9 A. I don't remember signing off but I --

10 Q. If anything was inaccurate, would you
11 have pointed it out to your counsel?

12 A. At the time we talked to him, yes.

13 Q. Anything in here now that appears to be
14 inaccurate?

15 A. The only one that jumped out at me was
16 the answer to No. 19 where main construction -- I
17 was mistaken. I thought it was a service to the
18 school, but there was actually a payment to him.

19 Q. I'm sorry?

20 A. There was actually a payment for that,
21 for removal of the windows.

22 Q. What changed your -- what is it that
23 refreshed your recollection from your testimony
24 45 minutes ago or less that it was for payment?
25 What changed of then reading this document?

1 A. My recollection 45 minutes ago is the
2 same as it is now 'cause you said service at
3 school; and you asked if we paid for it. I said,
4 "Yes, we did pay for it." The difference of the
5 recollection between here and today is that I was
6 reminded by Mr. Darnell that we did pay for that,
7 and there is a record.

8 Q. And who?

9 A. Mr. Darnell, our Director of Operations,
10 who handles that information.

11 Q. When were you reminded of that?

12 A. I don't remember.

13 Q. A month ago?

14 A. No. Less than that.

15 Q. Two weeks ago?

16 A. I don't -- I couldn't --

17 Q. Do you understand that we, as counsel,
18 have to rely on the accuracy of documents that
19 are provided to us?

20 A. I understand that.

21 Q. And what was it that caused you and this
22 gentleman to have the conversation about the
23 windows to begin with?

24 A. I don't recall.

25 Q. Mr. Darnell you said?

1 A. Yes.

2 Q. Does he still work at Bishop England
3 now?

4 A. Yes, sir.

5 Q. What is his job?

6 A. He is the Director of Operations.

7 Q. Were you talking about -- were you
8 talking about the lawsuit with him?

9 A. I was not talking about the lawsuit, no.

10 Q. You just randomly started talking about
11 who paid for the windows to be replaced at the
12 time we pulled the windows out at the school?

13 A. No.

14 Q. What would have precipitated that
15 conversation?

16 A. Mr. Maynard doing other work at the
17 school.

18 Q. Okay. And --

19 A. My understanding is the conversation --
20 I don't remember exactly how it happened.

21 Q. Who have you spoken to about this
22 lawsuit, other than your lawyers?

23 A. Than my lawyers?

24 Q. Other than -- I'm not asking for any
25 communication you had with your counsel.

1 A. Okay.

2 Q. That's privileged.

3 A. Sure.

4 Q. I'm just asking who else have you spoken
5 to about the lawsuit?

6 A. Mrs. Tucker. I have been asked about
7 it. Never had a conversation about it.

8 Q. Who have you been asked about it by?

9 A. Variety of different people.

10 Q. What kind of questions have they asked
11 you?

12 A. Just how it was going, what it was
13 about; and I said I -- it is what it is.

14 Q. What is your summation of what it's
15 about?

16 A. I don't know.

17 Q. You don't know what the lawsuit's about?

18 A. Well, I understand what the lawsuit's
19 about.

20 Q. What do you believe it's about? What is
21 your general statement on what it's about?

22 MR. DUKES: Object to the form.

23 A. It's -- it's a class action lawsuit
24 against the school for what you all believe is
25 the windows, opportunity for people --

1 Q. Which is what? What is the assertion?
2 How would you assert it?

3 MR. DUKES: Object to the form.

4 A. I don't know what the intended -- what
5 you're trying to do. I'm not a lawyer. I don't
6 know, kind of, what you're looking for.

7 Q. You don't understand that this is about
8 children who were viewed? That's the allegation.

9 MR. DUKES: Object to the form.

10 A. I understand the assertion in what the
11 lawsuit is, yes. I understand that part of it.

12 Q. So you understand the assertion is that
13 the children were viewed without knowing they
14 were being viewed by people in the coaches' room;
15 correct?

16 MR. DUKES: Object to the form.

17 A. That's the assertion of your lawsuit.

18 Q. And you have no basis to deny it, other
19 than you have no knowledge that it took place;
20 correct?

21 A. I have no knowledge that -- outside
22 Mr. Scofield that there was an issue.

23 Q. Right. But that doesn't mean there
24 wasn't. You don't have any knowledge there was
25 or wasn't, other than what you've been told;

1 correct?

2 MR. DUKES: Object to the form.

3 A. Yes.

4 Q. Is that yes?

5 A. Yes.

6 Q. And what you didn't know when you walked
7 in here today is that the type of blinds that
8 were utilized in that -- in the coaches' office
9 were of such a type that it would allow coaches
10 and teachers or people in the coaches' locker
11 room to view people in the locker room without
12 them knowing they're being viewed.

13 You weren't aware of that before you
14 came here today?

15 MR. DUKES: Object to the form.

16 Q. Is that correct?

17 A. I was not aware that, as you mentioned
18 to me, LS3P testified to that part of it.

19 Q. Right. That's -- but blinds are not
20 something that you had --

21 A. I'm not a blinds person.

22 Q. And I believe you testified that had you
23 known that was something, there were other
24 alternatives that could have been used that would
25 not have provided that same --

1 MR. DUKES: Object to the form.

2 A. I don't know what the --

3 Q. That would not have necessarily afforded
4 that same opportunity.

5 A. As, again, I don't know what other types
6 of blinds there would be that offer that part.

7 Q. You are aware that abuse in schools is
8 something that is the duty of a school to be
9 cognizant of; correct?

10 MR. DUKES: Object to the form.

11 A. I don't understand what you're asking
12 me.

13 Q. Well, did you read the paper this
14 morning about the Catholic Diocese in France?

15 A. I did not.

16 Q. Do you try to keep up with what is
17 happening around the world as it applies to
18 students and schools?

19 A. As far as the academic part of it, yes.

20 Q. Were you not aware that there was a
21 giant article on CNN about safety as it relates
22 to children, that over 216,000 children in the
23 French Catholic have been sexually abused by the
24 French Catholic clergy over the last seven
25 decades?

1 MR. DUKES: Object to the form.

2 A. I am not aware of that.

3 Q. And that the number jumped to 330,000,
4 if you take away the clergy?

5 MR. DUKES: Object to the form.

6 Q. If it's not only the clergy, if it's
7 other people as well.

8 A. I'm not aware of that, no.

9 Q. But it's a concern. You understand
10 there are pedophiles that exist in our community,
11 as well as other communities throughout the
12 country; correct?

13 MR. DUKES: Object to the form.

14 A. Sadly, yes. It is in all communities.

15 Q. You understand that part of your job and
16 part of the school's mission, part of the
17 school's job is to protect its community from
18 those types of people?

19 A. Yes.

20 Q. Would you agree with me that not
21 installing -- or that taking out those windows
22 would have been safer -- taking them out earlier
23 would have been safer than subjecting the kids to
24 someone looking at them, especially in light of
25 the fact that there have only been three

1 incidents --

2 MR. DUKES: Object to the form.

3 Q. -- the entire time that you've been at
4 the school?

5 A. I can't agree with that, no.

6 Q. How many incidents must there be at the
7 school in order to justify subjecting children to
8 being viewed?

9 MR. DUKES: Object to the form.

10 A. I don't have an answer for that
11 question.

12 Q. Is there a number?

13 A. I don't have a number, no.

14 Q. Is it ten?

15 MR. DUKES: Object to the form.

16 A. Again, I don't have a number.

17 Q. Are you weighing the difference in the
18 abuse to the children versus the incidents at the
19 school?

20 MR. DUKES: Object to the form.

21 A. No.

22 Q. Would you agree with me that it's a very
23 risky benefits analysis when you're trying to
24 determine at what point am I going to let
25 children potentially be viewed versus protecting

1 them from something that could happen?

2 MR. DUKES: Object to the form.

3 A. I don't know how you do a benefit
4 analysis. That's not my expertise. I mean,
5 that's not what I do.

6 MR. SLOTCHIVER: Mr. Finneran,
7 thank you very much. I've got nothing further.

8 MR. DUKES: I don't have any
9 questions. We'll have him read and sign, please.

10 THE WITNESS: Did you want this in?

11 MR. SLOTCHIVER: Let's see. Did we
12 put this in? Let's go ahead and put these in and
13 mark them, and I think we came to them in the
14 email on the -- the email that we received first
15 on the handbooks, and then afterwards the
16 discovery. So let's mark those.

17 (Exhibit No. 07 and Exhibit No. 08 were
18 marked for identification.)

19 (The deposition concluded at 11:49 a.m.)

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1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF HORRY

4 I, Ronda K. Blanton, a Registered
5 Professional Reporter and Notary Public for the
6 State of South Carolina at Large, do hereby
7 certify that the witness in the foregoing
8 deposition was by me duly sworn to testify to the
9 truth, the whole truth, and nothing but the truth
10 in the within-entitled cause; that said
11 deposition was taken at the time and location
12 therein stated; that the testimony of the witness
13 and all objections made at the time of the
14 examination were recorded stenographically by me
15 and were thereafter transcribed by computer-aided
16 transcription; that the foregoing is a full,
17 complete, and true record of the testimony of the
18 witness and of all objections made at the time of
19 the examination; and that the witness was given
20 an opportunity to read and correct said
21 deposition and to subscribe the same.

22 Should the signature of the witness not be
23 affixed to the deposition, the witness shall not
24 have availed himself/herself of the opportunity
25 to sign or the signature has been waived.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal on October 15, 2021, at Myrtle
Beach, Horry County, South Carolina.

Ronda K. Blanton
NCRA REGISTERED PROFESSIONAL
REPORTER, RPR
Notary Public,
State of South Carolina at Large
My Commission expires:
May 15, 2028.

1 DEPONENT CORRECTION SHEET
2 I, the undersigned, PATRICK FINNERAN, do hereby
3 certify that I have read the foregoing deposition
4 and wish to make the following clarifications
5 and/or corrections, if any.

4	PAGE	LINE	CHANGE	REASON
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20	PATRICK FINNERAN	Date
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